

Convent Marine Terminal  
7790 La. Highway 44  
Convent, LA 70723  
Tel: 225-562-5200  
Fax: 225-562-9948

Terminal Rules and Regulations  
Subject to Change Without Notice

Effective April 1, 2012

## TABLE OF CONTENTS

|    |                                                |    |
|----|------------------------------------------------|----|
| 1. | Definitions.....                               | 4  |
| A. | Agent or Vessel Agent or Customer .....        | 4  |
| B. | Arrival at Berth .....                         | 4  |
| C. | Berth.....                                     | 4  |
| D. | Cargo.....                                     | 4  |
| E. | CMT .....                                      | 4  |
| F. | Departure from Berth.....                      | 4  |
| G. | Designated Anchorage.....                      | 4  |
| H. | Loading and Unloading.....                     | 4  |
| I. | Mooring.....                                   | 4  |
| J. | Ocean Vessel.....                              | 4  |
| K. | Shipper .....                                  | 4  |
| L. | Storage .....                                  | 4  |
| M. | Terminal Fleet.....                            | 5  |
| N. | Ton .....                                      | 5  |
| O. | User or Users.....                             | 5  |
| P. | Vessel.....                                    | 5  |
| Q. | Vessel Party .....                             | 5  |
| R. | Visitors.....                                  | 5  |
| 2. | General Terminal Information .....             | 5  |
| A. | Location .....                                 | 5  |
| B. | Operating Hours.....                           | 5  |
| C. | Authorized Holidays .....                      | 5  |
| D. | Terminal Overview .....                        | 5  |
| 3. | Vessel Restrictions and Requirements .....     | 6  |
| A. | Vessel Restrictions.....                       | 6  |
| B. | Vessel Requirements and Certain Charges .....  | 6  |
| 4. | Scheduling.....                                | 7  |
| A. | Cargo/Vessel Nomination/Laycan .....           | 7  |
| B. | Vessel Berth Filing .....                      | 8  |
| C. | Vessel ETA's and Notifications.....            | 8  |
| 5. | Notice of Readiness & Laytime Provisions ..... | 9  |
| A. | Notice of Readiness (NOR) .....                | 9  |
| B. | Laycan Provisions.....                         | 10 |
| C. | Laytime Exceptions .....                       | 11 |
| D. | Ending Laytime.....                            | 12 |
| E. | Completion of Loading/Vacating Berth.....      | 12 |
| 6. | Berthing Provisions.....                       | 12 |
|    | [A-L do not have specific titles.]             |    |
| 7. | Loading/Unloading .....                        | 14 |
|    | [A-I do not have specific titles.]             |    |

|     |                                                                                 |    |
|-----|---------------------------------------------------------------------------------|----|
| 8.  | Additional Charges/Responsibility for Charges .....                             | 15 |
| A.  | Barge Fleeting .....                                                            | 15 |
| B.  | River Barge Cover Handling/Discharging Stacked Cover River Barges .....         | 15 |
| C.  | Intentionally Omitted .....                                                     | 15 |
| D.  | Bunkers .....                                                                   | 15 |
| E.  | Sampling .....                                                                  | 15 |
| F.  | Rights Reserved .....                                                           | 15 |
| G.  | Attorneys Fees/Costs .....                                                      | 15 |
| H.  | Maritime and Cargo Liens .....                                                  | 16 |
| I.  | No Right to Offset.....                                                         | 16 |
| J.  | Time of Invoices and Payment .....                                              | 16 |
| K.  | Dockage .....                                                                   | 16 |
| L.  | Laycan Cancellation Fee.....                                                    | 17 |
| M.  | Demurrage.....                                                                  | 17 |
| N.  | Ground Storage of Cargo .....                                                   | 17 |
| O.  | [No Title] .....                                                                | 18 |
| P.  | [No Title] .....                                                                | 18 |
| Q.  | Third Parties.....                                                              | 18 |
| R.  | Hold Cleaning .....                                                             | 18 |
| S.  | Visitors and Delivery of Vessel Provisions .....                                | 18 |
| 9.  | Indemnity/Risk Allocation/Pollution .....                                       | 19 |
|     | [A-H do not have specific titles.]                                              |    |
| 10. | Force Majeure .....                                                             | 20 |
|     | [A-C do not have specific titles.]                                              |    |
| 11. | Limitation of Damages .....                                                     | 21 |
|     | [A does not have a specific title.]                                             |    |
| 12. | Miscellaneous/Legal .....                                                       | 21 |
|     | [A-F do not have specific titles.]                                              |    |
|     | EXHIBIT 1: Convent Marine Terminal Ocean Vessel Application for Berth .....     | 23 |
|     | EXHIBIT 2: Convent Marine Terminal Rate Sheet.....                              | 25 |
|     | EXHIBIT 3: Convent Marine Terminal Commodity Transfer Terms and Conditions..... | 26 |

## **GENERAL GUIDANCE REGARDING THE RULES AND REGULATIONS**

These Rules and Regulations shall govern all storage, transfer and Cargo handling services provided at the Convent Marine Terminal (“CMT” or “Terminal”). The use of any of the piers, wharfs, docks or other facilities of CMT shall constitute the User’s consent to be bound by the terms and conditions contained in these Rules and Regulations. In the event of any inconsistency between these Rules and Regulations and any other agreement or contract, these Rules and Regulations shall govern. CMT reserves the right to modify any terms contained in these Rules and Regulations at any time without notice. Nothing contained herein obligates CMT to make its facilities and services available for use by any person or entity unless such persons or entities enter into a written contract signed by all parties concerning such services.

### **SECTION 1 – DEFINITIONS**

- A. AGENT OR VESSEL AGENT OR CUSTOMER:** The term “Agent” or “Vessel Agent” or “Customer” is the party who submits the Application for Berth.
- B. ARRIVAL AT BERTH:** The term “Arrival at Berth” shall be the time when the Vessel arrives alongside the dock with two Mooring lines made fast.
- C. BERTH:** The term “Berth” or “Berths” means CMT’s docks and mid-stream transfer facilities including CMT's Mooring buoys.
- D. CARGO:** The term “Cargo” shall include, but not be limited to, coal, petroleum coke, furnace coke, fertilizer, grain, steel related scrap products and other dry Cargo.
- E. CMT:** The term “CMT” means Convent Marine Terminal that is owned by RAVEN ENERGY OF LOUISIANA and all of its real property, personal property and facilities.
- F. DEPARTURE FROM BERTH:** The term “Departure from Berth” shall be the time when the last line is let go.
- G. DESIGNATED ANCHORAGE:** The term “Designated Anchorage” shall be the anchorage located at Grandview (Mile 146.4 to 148.8).
- H. LOADING AND UNLOADING:** The terms “Loading” and “Unloading” shall mean the service of Loading or Unloading Cargo, as the case may be, between any place at CMT and railroad cars, trucks, Vessels, river barges or any other means of conveyance to or from CMT.
- I. MOORING:** Where applicable, the term “Mooring” shall mean CMT’s mooring facilities.
- J. OCEAN VESSEL:** The term “Ocean Vessel” shall mean any Vessel, other than a river barge, that utilizes the services and facilities of CMT for the Loading, Unloading, Storage, handling or transfer of Cargo.
- K. SHIPPER:** The term “Shipper” shall include Vessel Party and all individuals and business entities which contract in writing directly with CMT to utilize or intending to utilize the services and/or facilities of CMT.
- L. STORAGE:** The term “Storage” shall mean the service of providing facilities for the outside storing of inbound or outbound Cargo.

- M. TERMINAL FLEET:** The term “CMT Fleet” shall mean the Raven Energy CMT river barge upper and lower fleets at CMT.
- N. TON:** The term “ton” shall mean a net ton of 2000 lbs. unless otherwise indicated.
- O. USER OR USERS:** The terms “User” or “Users” shall include Vessel Party and all individuals or business entities, including all Ocean Vessels, river barges, trucks, railroad cars or other means of conveyance and/or equipment used by said individuals or business entities, which utilize the services and/or facilities of CMT.
- P. VESSEL:** The term “Vessel” or “Vessels” shall include any river barge, ocean-going barge, lash barge, tug, towboat, lighter, raft, Ocean Vessel, or other watercraft that floats. References to “Vessel” or “Vessels” shall include, unless otherwise specified, her owners, operators, managers, charterers, masters and agents.
- Q. VESSEL PARTY:** The term “Vessel Party” or “Vessel Parties” means any party or parties owning, nominating or contracting with the Vessel, including, but not limited to, its agent(s), owner(s), operator(s) and/or charterer(s).
- R. VISITORS:** The terms "Visitors" or "Visitor" mean any individual or entity listed in the Visitor List and any other individual or entity that seeks access to CMT facilities or any Vessel berthed there, including, but not limited to, any surveyor.

## **SECTION 2 – GENERAL TERMINAL INFORMATION**

The information and descriptions provided in Section 2 are for general informational purposes only, and do not constitute a guaranty or warranty of performance with respect to any terminal services, equipment or facilities.

- A. Location:** CMT is located at approximately LMR Mile 161.5 on the eastern side of the Mississippi River in Convent LA, U.S.A.
- B. Operating Hours:** CMT operates twenty-four (24) hours a day throughout the year except for Authorized Holidays. CMT office hours are from 0700 hours to 1600 hours (Central Time Zone), Monday through Friday. If a Vessel requests CMT to work on a Holiday, such request must be made at least twenty-four (24) hours in advance of the Holiday. If the request is accepted at CMT’s sole discretion, all Mooring charges will be increased 150% for Holiday work.
- C. Authorized Holidays:** New Year’s Eve, New Year’s Day, Mardi Gras, Easter Sunday, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day. These Authorized Holidays shall not be counted in calculating laytime.
- D. Terminal Overview:** CMT is designed to receive bulk inbound commodities via rail, barge, truck or vessel. Outbound bulk commodities are also shipped via rail, barge, truck or vessel. Rail service to the facility is provided by the Canadian National Railway Company. Waterborne material is received and shipped out of CMT via the Mississippi River. For additional information regarding services, please contact our operations department by e-mail at [ops@cmt.us.com](mailto:ops@cmt.us.com).

### **SECTION 3 – VESSEL RESTRICTIONS AND REQUIREMENTS**

#### **A. Vessel Restrictions:**

1. Vessels to be loaded shall be gearless single deck self-trimming bulk carriers. Geared Vessels chartered by Customer are subject to CMT approval, which shall not be unreasonably withheld. Drawings or diagrams with dimensions shall be provided to CMT prior to a Vessel's arrival in order to verify that ships gear can be stowed so as to be able to load compatibly with CMT dock equipment and layout. Any failure to comply with this that results in either a delay in berthing or the inability of CMT to safely berth the Vessel alongside shall not be held against CMT. All charges associated with delays or non-acceptability of a Vessel under this provision shall be for the Vessel's account.
2. Vessel's maximum overall length: Eight Hundred Fifty (850) Feet.
3. Vessel's maximum overall beam: One Hundred Fifty (150) Feet.
4. The maximum air draft waterline/top of hatch coaming is sixty (60) feet at mean low water – 4.9 feet at Donaldsonville.
5. CMT generally maintains a water draft of approximately forty-five (45) feet. However, the controlling draft for sailing from CMT is the water draft available at Southwest Pass. The Vessel, her Master and the Vessel Agent are to determine the exact sailing draft prior to Loading Cargo, and CMT makes no promises, representations or warranties regarding water draft and the Vessel's safe berth, ingress or egress in regards to such water draft.

#### **B. Vessel Requirements and Certain Charges:**

1. Vessels to be loaded at CMT shall comply with all applicable federal, state, local and port and harbor authority regulations in force.
2. The Vessel's master shall be responsible for safe docking and undocking of the Vessel. Tugboats shall be used for all docking and undocking activity with the cost associated for this service, or any other cost associated with docking and undocking, for the Vessel's account. The Vessel shall have sufficient equipment, personnel and service providers (including but not limited to stevedores) to conduct business operations on a twenty-four (24) hour per day basis.
3. Docking charges shall be assessed on all Vessels Mooring at CMT in accord with the CMT rate sheet, Exhibit 2. Charges shall be assessed continuously and without interruption for each consecutive twenty-four (24) hour day, with partial days calculated pro rata in eight (8) hour increments rounded up, all subject to a daily minimum charge, commencing on the arrival at the Mooring and ending on a departure from the Mooring.
4. Rates established by CMT do not include harbor fees or any other charges that may be assessed by the South Louisiana Port Commission or any other governmental agency. Any such charges assessed will be for the sole account of the Vessel, and the Vessel will indemnify CMT for any such charges assessed against CMT.

5. All charges for line handling (Mooring and Unmooring) shall be invoiced to the Vessel directly. CMT reserves the right to deny access to its Facility to any service providers who fail to abide by the requirements of CMT.

#### **SECTION 4 – SCHEDULING**

##### **A. Cargo/Vessel Nomination/Laycan:**

1. The Nomination of a Cargo/Vessel shall be furnished to CMT by e-mail ([ops@cmt.us.com](mailto:ops@cmt.us.com)) between the hours of 7:00 a.m. and 4:00 p.m. Mondays thru Fridays, excluding Saturdays, Sundays and Authorized Holidays. The Customer shall nominate a six (6) day laycan window for each Cargo/Vessel to be loaded at CMT not less than thirty (30) days prior to the first day of the six (6) day nominated laycan window. The Nomination shall contain:
  - a. The name of the Vessel (if known). “To Be Named” (TBN) Vessel requests are acceptable during the Nomination process.
  - b. The requested six (6) day laycan period.
  - c. The quantity of the Cargo required, plus or minus 10%.
2. Within twenty-four (24) hours of receipt of the laycan request, excluding Saturdays, Sundays and Authorized Holidays, CMT shall confirm acceptance of the six (6) day laycan window or advise Customer that CMT is unable to accept the laycan request. Should CMT be unable to accommodate the requested laycan window, CMT shall propose to Customer a new six (6) day laycan window and Customer shall have twenty-four (24) hours from receipt of CMT’s proposed six (6) day laycan window to accept. CMT will confirm acceptance.
3. Not less than fourteen (14) days prior to the first day of the six (6) day laycan window, Customer shall narrow the six (6) day laycan window to a four (4) day laycan window, and confirm with CMT the amount of Cargo to be loaded (must be within original requested tonnage as set forth in A.1. above). CMT is to confirm receipt of this information, and, at CMT’s discretion, approve the four (4) day laycan window as requested by Customer.
4. Not less than seven (7) days prior to the commencement of the four (4) day laycan window, Customer or its Agent shall provide CMT with the following details by email ([ops@cmt.us.com](mailto:ops@cmt.us.com)) relating to the Vessel to be loaded: (CMT is to confirm receipt)
  - a. Name of Vessel.
  - b. Current Vessel ETA, Southwest Pass.
  - c. Last Cargo carried.
  - d. Last port of call.
5. Failure of Customer to adhere to all notification requirements contained in the nomination process may delay the Vessel from berthing/Loading at CMT. Any cost(s)

associated with a delay arising from the failure of Customer to abide by the nomination process shall be for the Vessel's sole expense. A Vessel arriving outside of its laycan window will be accepted at CMT's sole discretion and based on availability with no demurrage protection.

6. Customer may cancel a scheduled laycan window without penalty by providing written notice of such cancellation to CMT at least twenty-one (21) days prior to the first day of the scheduled laycan window. If Customer cancels a laycan window less than twenty-one days prior to the first day of such laycan window, CMT shall be entitled to a "Laycan Cancellation Fee" for Customer's account. The Laycan Cancellation Fee is assessed per Vessel and is: (1) \$35,000 for Vessels capable of Loading and/or Unloading only 50,000 metric tons or less of Cargo, or (2) \$50,000 for Vessels capable of Loading and/or Unloading more than 50,000 metric tons of Cargo.

**B. Vessel Berth Filing:**

1. All Vessels, their owners, operators, managers, charterers, masters and/or agents that intend to utilize the facilities and services of CMT shall file by e-mail ([ops@cmt.us.com](mailto:ops@cmt.us.com)) an Application for Berth, Exhibit 1 attached hereto. An executed Original of the Application for Berth must follow by U.S. Mail. The Application for Berth must be received by CMT between the hours of 7:00 a.m. and 4:00 p.m. Mondays through Fridays, and no later than seven (7) days prior to the arrival of the Vessel at CMT.
2. No later than twenty-four (24) hours prior to the arrival of the Vessel at CMT, the following documents must be supplemented as part of the Application for Berth:
  - a. Certificate of Readiness in all compartments issued by a local representative of the National Cargo Bureau, Inc.;
  - b. Copies of Vessel Gear Certificates as required by Title 29, Chapter XIII, Part 1504 of the Federal Register, as may be amended or modified by the United States Department of Labor;
  - c. Evidence to the effect that the Vessel has been entered at the United States Customs House; and
  - d. Evidence to the effect that the Vessel has been tendered to and accepted by the charterer when applicable.
3. Failure to adhere to the filing of an Application for Berth and timely supplement the required documents may delay the Vessel from berthing/Loading at CMT. Any cost(s) associated with a delay arising from the failure to timely file an Application for Berth and/or timely supplement the required documents as set forth in subpart B.2. above shall be at the sole expense of the Vessel and Customer.
4. The fully executed Application for Berth shall constitute a contract between the Vessel, Customer and CMT only when accepted by CMT. CMT may accept the Application for Berth either by separate writing or by assigning a berth to the Vessel.

**C. Vessel ETA's and Notifications:**

1. The Vessels' Master or agent shall advise CMT of the Vessel's estimated time of arrival (ETA) seven (7) days in advance, five (5) days in advance, three (3) days in advance, then again forty-eight (48) hours and twenty-four (24) hours before arrival at CMT.

Notice of ETA must be filed by e-mail ([ops@cmt.us.com](mailto:ops@cmt.us.com)). The seven (7) day ETA notice message should include:

- a. Total Cargo requested (must be within +/-minus of original nomination);
  - b. Stowage plan (tonnage by compartment); and
  - c. Compartment Loading sequence.
2. Failure of the Vessel to provide the information requested above may delay the Vessel from berthing/Loading at CMT. Any cost(s) associated with a delay in the Vessel berthing/Loading from failure of Vessel to provide ETA information and Cargo requirements to CMT shall be at the sole expense of the Vessel.

## **SECTION 5 – NOTICE OF READINESS & LAYTIME PROVISIONS**

CMT will receive Vessels twenty-four (24) hours per day, Saturdays, Sundays and holidays included, except on Authorized Holidays.

### **A. Notice of Readiness (NOR):**

1. Vessels filing a Berth Application to utilize CMT normally will be required to anchor at the Designated Anchorage. Whenever a NOR has been issued, the Vessel shall be prepared to come to Berth and commence Loading or Unloading operations, as the case may be, upon three (3) hours notice. Upon assignment to a Berth, the Vessel shall remain prepared and be properly crewed to promptly carry out Cargo transfer operations within or between Terminal's Berths, and undock and vacate the Berth on order of the Terminal twenty-four (24) hours a day, seven (7) days a week, with any crew overtime being at the sole cost and expense of the Vessel. For purposes of these Terminal Rules and Regulations, "promptly" shall mean within thirty (30) minutes of notice being tendered by CMT. In the event that the Vessel fails to comply with these requirements, CMT may, in its sole discretion, and without liability to anyone, bypass the subject Vessel. If the Vessel is ordered to Berth and a delay in delivery of the Vessel to Berth occurs in excess of three (3) hours from the time that the Vessel was ordered to Berth and such delay is due to circumstances or conditions within the control or due to the fault of the Vessel, its owner(s), operator(s), charterer(s), Agent(s) or employee(s), then the Vessel, its owner(s), operator(s), charterer(s) and Agent(s) shall be responsible, jointly and severally, for a dead Berth charge of \$5,000 for each hour or fraction thereof until the Vessel is moored in Berth, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages and not as a penalty.
2. NOR may be tendered by telephone (with confirmation in writing) by Vessels any time day or night (including Saturdays and Sundays but excluding Authorized Holidays) when the Vessel is at the Designated Anchorage, or, as provided in sub-part 3 directly below, the next closest available anchorage.
3. In the case of an Ocean Vessel to be loaded, issuance of the NOR shall mean that the Vessel:

- a. has obtained all requisite governmental approvals, inspections and clearances, including, but not limited to, those required by the U.S. Customs Service and the Immigration and Naturalization Service;
  - b. is located at the Designated Anchorage or the next closest available anchorage to CMT;
  - c. is ready and suitable in all respects to receive the Cargo in all holds to be loaded;
  - d. has confirmed with the CMT that the Cargo to be loaded to Vessel is in storage at the CMT or, if Cargo is to be direct transferred, is in barges in CMT's fleet; and
  - e. has determined that the Cargo is in a condition satisfactory to the Vessel Party and all regulatory authorities for shipment.
4. NOR shall be considered invalid and time shall not begin to run unless the aforementioned five conditions are met.
5. Customer specifically acknowledges that varying temperatures, moisture and weight changes and spontaneous combustion constitute inherent problems associated with the handling of coal, petroleum coke and other Cargo. Prior to Loading or Unloading, Customer's surveyor shall determine that the temperature, moisture and condition of the Cargo is satisfactory. Further, Customer agrees to defend, indemnify and hold harmless CMT, its owners, operators, parent, subsidiary and affiliated companies, persons, firms or other entities which may manage, own or control the operations of CMT and RAVEN ENERGY OF LOUISIANA and the officers, directors, Agents, Vessels (other than the Vessel referenced above in this paragraph) and insurers of all of the foregoing (collectively, the "CMT Indemnitees") for and from any claim for loss or damage howsoever same shall be caused to or involving the coal, petroleum coke and other Cargo, even if caused in whole or in part by the negligence, strict liability or other fault of the CMT Indemnities, from and against any claims arising out of or related to varying temperatures, moisture and weight changes and spontaneous combustion of the Cargo, regardless of cause.
6. Whenever NOR has been submitted as noted above, the Vessel shall remain prepared to come to the Berth and be compliant with all the conditions set forth herein. While at Berth, the Master shall remain prepared and the Vessel properly crewed to promptly carry out Cargo transfer operations, and undock and vacate berth on order of CMT representative twenty-four (24) hours a day, seven (7) days a week with any crew overtime being at the Vessel's expense. In the event CMT orders the Vessel to vacate the Berth for failure to comply with these terms and conditions, Customer's NOR shall be withdrawn and laytime and demurrage shall be suspended.
7. CMT may require the undocking from the Berth of any Vessel that is unable to commence or continue to be loaded in accordance with the Vessel's written Loading plan or at a materially inhibited rate of Loading due to any cause beyond the reasonable control of CMT that delays the efficient use of CMT. Laytime and demurrage will be suspended for any Vessel that is required to undock pursuant to this section.

**B. Laycan Provisions:**

1. If Vessel tenders NOR before the agreed to 1<sup>st</sup> day of the four (4) day laycan, laytime shall commence twelve (12) hours (Notice Time) after 00:01 on the first day of the agreed upon four (4) day laycan, unless Loading starts earlier in which case laytime will count from the commencement of Loading.

2. If Vessel tenders NOR within the agreed upon four (4) day laycan, laytime shall commence twelve (12) hours after NOR is tendered, unless Loading starts earlier in which case laytime to count from the commencement of Loading.
3. If Vessel tenders NOR after the agreed upon four (4) day laycan, CMT shall use reasonable efforts, contingent upon the existing CMT dock schedule and availability, to berth the Vessel. Acceptance of NOR will not be unreasonably withheld. Once the Vessel is rescheduled and brought to the Berth, laytime will count from the commencement of Loading.

**C. Laytime Exceptions:**

1. Once a NOR has been properly submitted as provided herein, time shifting from the Designated Anchorage (or next closest available anchorage where NOR was tendered) to Loading Berth, commencing with pilot on board and ceasing when all fast alongside, shall not count as laytime.
2. If once the Vessel is all fast alongside the Loading Berth, it is determined that the Vessel is not in all respects ready to load Cargo regardless of cause, then any delay in Loading shall not count as laytime. Loading delays may occur because of the following reasons, including but not limited to:
  - a. Deballasting;
  - b. Moving vessel equipment;
  - c. Moving hatch covers;
  - d. Vessel hold compaction;
  - e. Surveys;
  - f. Shifting of Vessel;
  - g. Trim Checks;
  - h. Draft Checks; and/or
  - i. Any restrictions imposed by the Vessel.
3. Time awaiting the arrival of Cargo shall not count as either laytime or Notice Time.
4. Time lost due to inclement weather or river conditions which in CMT's sole discretion, adversely affect the performance of CMT equipment, place the safety of any personnel at risk or which otherwise make Loading impractical, shall not count as laytime.
5. Time lost due to Authorized Holidays as cited in Section 2(C), shall not count as laytime.
6. If any CMT operations are suspended due to U.S. Coast Guard or Homeland Security changes in the MarSec levels or other such directives, demurrage and laytime will be

similarly suspended until such time that the higher levels are reduced and operations can recommence.

7. During the course of Loading/unloading operations, if weather (including rain, hail, snow, lightning or high winds) causes a cessation of activity for personal or property damage risk or the well-being of Vessel or terminal employees, demurrage and laytime shall be suspended until such time the event has passed.

**D. Ending Laytime:**

1. Notwithstanding anything to the contrary herein, laytime shall immediately cease upon completion of loading Cargo to Vessel.

**E. Completion of Loading/Vacating Berth:**

1. Subject to NOBRA pilot availability, the Vessel shall vacate the Berth within one (1) hour of completion of Loading or Unloading and the completion of the final draft survey. Should any Vessel fail to vacate the Berth within this allowed time, the Vessel will be subject to liquidated damages set forth in Section 6(G). If the Vessel cannot leave due to weather or with CMT's agreement, paragraph 6(G) shall not apply.

**SECTION 6 – BERTHING PROVISIONS**

- A. The master of any Ocean Vessel shall be solely responsible for determining if the depth of water (at any tide or river stage) is sufficient for the Vessel, CMT having no responsibility therefore. CMT shall not be deemed to warrant the safety of public channels, fairways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where any Vessel may operate. Furthermore, CMT shall not be deemed to warrant the safety of any of the Berth's docks or midstream facilities, including CMT's Mooring buoys. Any and all shifting costs, into and out of the Mooring, whether under the provisions set forth above or otherwise shall be for the Vessel's sole account.
- B. The Vessel will be maintained in trim and the engines in a condition such that it can leave the Berth on short notice (thirty (30) minutes or less). Whenever a Vessel is ordered to leave the Berth for any reason, the Vessel shall promptly: (1) move from the Loading Berth at the Vessel and Customer's expense; and (2) acknowledge receipt of the Cargo received on board by signing an original ship's receipt.
- C. Mooring lines must be in a reasonably fit condition and will be tended to keep from going slack. Tension winches are set on manual brake. Once positioned at the dock, the Vessel may not be moved forward or backward as Mooring lines are tendered. If the Vessel is moved, the Loading will be halted until the Vessel is shifted to its original position. While at the dock, no repairs or maintenance will be performed without prior authorization from CMT management.
- D. An English speaking member of the crew, preferably an officer, must always be on duty to communicate with CMT personnel so as to permit operations, including line handling and movement of the Vessel, anytime day or night including Saturdays, Sundays and Authorized Holidays. CMT may elect to place an observer aboard the Vessel who will in no way be responsible for any phase of the Vessel's operations. His purpose will be to improve communication between the Vessel and shore.

- E.** Hurricane Alert – Cargo transfer operations will be suspended upon notice of U.S. Coast Guard Alert. Notice to evacuate by local Civil Defense Authorities (St. James Parish Government) or CMT Manager’s evaluation of local weather conditions at the time will require all Vessels to vacate the Berth and move to anchor at Vessel and Customer’s expense.
- F.** The Master of the Vessel will ensure that the Vessel will be Loaded/Unloaded so that she remains in a safe and seaworthy trim throughout the entire Loading/Unloading operation to permit shifting out of the Berth, should it become necessary, when and if ordered. In the event the Vessel does not promptly leave the Berth when so ordered for any reason, any costs, attorneys fees, or expenses in connection with the moving of the Vessel shall be for the account of the Vessel, and the Vessel shall be liable for liquidated damages for the period it remains at Berth after notice to vacate as provided in Section 6(G).
- G.** Whenever a Vessel is unable or refuses to load or unload, or shift within or between anchorage sites, mid-stream transfer facilities, berths or docks, CMT may order the Vessel to vacate the Berth by delivering notice to vacate to the Vessel’s master or agent. If the Vessel refuses or fails to vacate the Berth when ordered to vacate, CMT shall be entitled to charge and recover from the Vessel and the Vessel Party as liquidated damages but not as a penalty, the sum of \$5,000 per hour (with partial hours prorated) beginning one hour after delivery of the notice to vacate and continuing as long as the Vessel remains in Berth, regardless of any intervening circumstances of any nature. CMT reserves the right to order, at its sole discretion, any Vessel to vacate the Berth. Should the Vessel fail to vacate the Berth when so ordered, a charge of \$5,000 per hour (with partial hours prorated) shall be assessed against the Vessel and Vessel Party as liquidated damages until the Vessel vacates the Berth, regardless of any intervening circumstances of any nature. If the Vessel does not vacate the Berth when so ordered, the Vessel will be subject to, in addition to the liquidated damages above, all expenses that CMT incurs, including but not limited to, attorney fees, litigation expenses and all other costs and expenses of any kind whatsoever in connection with the moving of the Vessel to another berth, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Vessel and Vessel Party.
- H.** Pursuant to regulations promulgated by the United States Department of Labor, Bureau of Labor Standards, all gangways/ladders must meet particular standards. It is necessary that all Vessels must comply in all respects with these regulations while in berth:
1. Under Annex I of the International Convention for the Prevention of Pollution From Ships (Marpol) vessel desiring to discharge oily waste shall arrange for the discharge with a company approved by the Captain of the Port, United States Coast Guard.
  2. Under Annex V for the International Convention for the Prevention of Pollution From Ships (Marpol) a vessel desiring to dispose of ship-generated garbage shall arrange in advance with a company approved by the Captain of the Port, United States Coast Guard.
- I.** During the course of the Loading/Unloading operations, should the Loading/Unloading operation cease or be interrupted for any reason, including but not limited to emanation of objectionable odor, smoke, soot or other material, pollutant or contaminant, emanating from the Vessel’s compartments or due to the condition of the Vessel’s suitability to receive or discharge Cargo or a decision by the master of the Vessel, the Vessel shall immediately: (1) Move from the Loading berth at the Vessel’s sole expense; and (2) acknowledge receipt of the Cargo on board by signing an original ship receipt.

- J.** The Vessel shall be responsible for any and all damages to the Mooring facility by reason of the Vessel's failure to vacate the Berth when ordered.
- K.** CMT shall not be responsible for the loss of or damage to Vessels moored at the Berth or any of their equipment or cargo.
- L.** If, in the sole opinion of CMT, river conditions so warrant, any Vessel in Berth may be ordered at any time of day or night, to vacate said Berth and anchor in an approved anchorage area until such time as conditions permit the Vessel to return to Berth.

#### **SECTION 7 – LOADING/UNLOADING**

- A.** The Loading sequence/hold rotation and stowage are to be provided upon the Vessel's arrival. The Loading/Unloading plan must conform to CMT procedures of a maximum of two passes per hold and no more than two (2) hold trims (the forward most cargo hold to the bow and aft most cargo hold to the stern of the Vessel are not eligible for cargo trimming).
- B.** The Vessel shall inspect and supervise, continuously, all Cargo Loading or Unloading operations, shall be in charge thereof, and shall have sole responsibility for any damage to property or persons resulting therefrom.
- C.** If the Vessel places any equipment and/or personnel on CMT's dock facility, the Vessel and the Vessel Party shall be solely responsible for and shall indemnify, defend and completely hold harmless, the CMT Indemnitees for any claim for loss or damage to said equipment or any injured personnel, and/or for loss or damage to the CMT Indemnitees property or injury or death of the CMT Indemnitees personnel, arising from or occurring in connection with said equipment or property of the Vessel, howsoever same shall be caused, even if caused in whole or in part by the negligence, strict liability or other fault of the CMT Indemnitees.
- D.** Vessels berthed at the CMT facility shall at all times maintain appropriate officers and crew aboard to permit Loading or unloading of Cargo at any time of the day or night including Saturdays, Sundays or holidays, to conduct all necessary line handling, and to move the Vessel safely in and out of the berth.
- E.** The Vessel shall not discharge any smoke, soot, liquid or solid waste, pollutant or contaminant in the vicinity of the Mooring site. The Vessel and the Vessel Party shall defend, indemnify, and hold the CMT Indemnitees completely harmless for any pollution or response cost, cleanup or remediation cost or any other costs, expenses or fines of any kind whatsoever incurred by the CMT Indemnitees if the Vessel should violate this section, including but not limited to any attorneys' fees, litigation expenses and other costs and expenses the CMT Indemnitees may incur, and in addition, the Vessel and the Vessel Party shall pay CMT as liquidated damages and not as a penalty, the sum of \$5,000 for each day (with partial days calculated pro rata) while the Vessel is in violation of this section.
- F.** When bagging, strapping, bundling or other similar Cargo operations are necessary, the Vessel may, at the sole discretion of CMT, be ordered to vacate the Berth at its own expense, during which time all demurrage and laytime shall be suspended.
- G.** Any delay to CMT in Loading or Unloading resulting from Vessel operations or otherwise caused by the Vessel for any reason, shall result in imposition of liquidated damages of \$5,000 for each hour of Loading and discharge delay. This includes, but is not limited to, draft surveys and draft

checks which exceed 1.5 hours. Should a Vessel at the Mooring find it necessary to load or discharge ballast, to fuel, take on fresh water, or other operations, such operations must be planned sufficiently in advance so that Loading or Unloading of the Vessel will not be delayed. Any lost time as a result of the same shall not count as demurrage or laytime.

- H. When an officer of the Vessel advises CMT personnel to stop Loading because the Loading is complete, CMT will relocate its personnel to other operations or tasks. If for any reason the Vessel requires additional Cargo after that time, the Vessel will be responsible to CMT for a restart fee appropriate with the circumstances determined in the sole discretion of CMT, not to exceed \$5,000. Furthermore, any holds that must be leveled and compacted a second time or more because of the requirement for additional Cargo will also be the responsibility of the Vessel.
- I. Any and all charges, costs, fines and/or penalties levied by any federal, state or local governmental agency on account of, because of, caused by, or in any way connected with the Vessel, shall be paid by the Vessel, and as to any such charges, costs, fines or penalties imposed on any CMT Indemnitee by reason of the foregoing, the Vessel shall indemnify therefore.

#### **SECTION 8 – ADDITIONAL CHARGES/RESPONSIBILITY FOR CHARGES**

- A. **Barge Fleeting:** At the request of those Loading/Unloading the Vessel to CMT, arrangements may be available for the fleeting and switching of barges by a third-party.
- B. **River Barge Cover Handling/Discharging Stacked Cover River Barges:** River barge cover handing and discharging of stacked covers is provided by an independent third party contractor and is available to User at CMT at the sole cost and expense of the User. It is understood and agreed that CMT shall not, under any circumstances, be responsible or liable for cover handing, discharging stacked covers or any lack thereof.
- C. **Intentionally Omitted.**
- D. **Bunkers:** No bunkers, diesel fuel or oils may be received by Ocean Vessels in Berth absent the prior approval of CMT. To the extent the taking of bunkers hinders CMT operations, the actual cost associated with any delay will be billed to the Vessel Party. CMT reserves the right to assess a bunker fee if Vessel is allowed to accept a bunker barge while at Berth.
- E. **Sampling:** Automatic mechanical sampling services are provided by an independent third party contractor and are available to the User at CMT at the sole cost and expense of the User. It is understood and agreed that CMT shall not, under any circumstances, be responsible or liable for the sampling services or any lack thereof.
- F. **Rights Reserved:** All charges for services performed under this agreement, and liquidated damages or other charges due, shall be payable by the party executing the Application for Berth without any prejudice to any rights of CMT against all other parties defined as the Vessel for such payments.
- G. **Attorneys Fees/Costs:** If at any time, CMT is required to employ the services of an attorney at law to collect charges due, protect any rights, or otherwise take action against the Vessel, Vessel Party or Customer, then the Vessel, Vessel Party and Customer shall pay all attorneys' fees, litigation expenses and all other costs and expenses incurred by CMT during the course of enforcing any rights that it has pursuant to these Rules and Regulations. In the event of any

dispute, the Vessel, Vessel Party and Customer all agree to submit to the jurisdiction of the courts of the State of Louisiana or the United States District Court for the Eastern District of Louisiana.

- H. Maritime and Cargo Liens:** CMT particularly reserves the right to a maritime lien on all the Vessels making use of its services pursuant hereto for all amounts due CMT, and by booking such services, the party executing and/or submitting the Application for Berth warrants that he/they have the authority to contract for services on behalf of the Vessels so represented, and to bind the Vessel therefore. All lawful charges made by or due to CMT shall constitute a lien in favor of CMT upon the Cargo as well as any Vessel for such charges to the full extent permitted by law. It is understood and agreed that CMT shall have the right to retain possession of and/or relocate any Cargo within CMT if necessary to preserve and maintain its lien rights. CMT shall have no liability to Vessel Party by retaining and/or relocating Cargo at CMT.
- I. No Right to Offset:** Any person, firm or corporation contracting for the use of the Mooring facility, expressly agrees to pay all charges for the services rendered in accordance with these Rules and Regulations regardless of claims pending or asserted against CMT and/or its owners, parent, affiliates and/or its underwriters and/or its owners, officers or employees. In no case shall such claim be offset against any invoice or services performed by the Facility unless or until such claim is reduced to a judgment by a court of competent jurisdiction.
- J. Timing of Invoices and Payment:** CMT shall invoice all Customers on inbound tons, whenever the initial handling of the Cargo occurs, as follows: (1) Cargo unloaded from a river barge direct to (a) storage at CMT, or (b) a Vessel, (2) Cargo unloaded from a Vessel direct to (a) storage at CMT or (b) another Vessel including a river barge, (3) Cargo unloaded from a Vessel direct to another Vessel including a river barge, etc. CMT shall render invoices for services provided hereunder, including, but not limited to, those services as set forth in Exhibit 2, upon completion of said services and the User agrees to pay said invoices within fifteen (15) days from date of invoice. The invoice shall also contain reconciliation for Dockage charges which are to be secured with a deposit pursuant to Section 8(K) below. Any invoice that remains unpaid after fifteen (15) days from date of invoice shall earn interest, compounded at one and one-half interest (1½%) percent per month or portion thereof or the maximum legal interest rate allowed under Louisiana law to the extent that a rate of one and one-half (1½%) percent per month violates Louisiana laws. Any pending or alleged claims against CMT will not be allowed as an offset against outstanding or accrued charges until such claims have been agreed to by CMT in writing or legally established by court order.
1. The number of tons of Cargo to be invoiced by CMT shall be certified by a representative of the National Cargo Bureau or a mutually agreed surveyor who shall perform a displacement survey to determine the tonnage transferred either by barge or vessel. Such displacement survey shall be performed at the sole cost and expense of the User and it is agreed that copies of the certificate shall be concurrently submitted to the User and CMT.
  2. Any charges for liquidated damages are due in full before the Vessel will be allowed to leave CMT. Moreover, Vessel Party agrees to waive any damages it may sustain resulting from any delay in Vessel leaving CMT because of Vessel Party's failure to pay or delay in paying liquidated damages.
- K. Dockage:** Dockage fees calculated on the basis of Exhibit 2 shall be assessed to any Vessel berthed at CMT or at any CMT buoy system.

1. Prior to berthing, the Vessel Party will be required to deposit with CMT an amount sufficient to cover all estimated charges due, including dockage and line handling. CMT reserves the right to postpone Cargo operations until the full requested deposit has been received. Additional deposits may be required during the Loading in the event actual charges incurred exceed any deposit(s) received. Cessation of operations will occur if actual charges incurred exceed total deposit(s) received, and any delays and costs and penalties associated created thereby shall be for Vessel Party's account.
- L. Laycan Cancellation Fee:** A Laycan Cancellation Fee pursuant to Section 4(A)(6) above will be invoiced by CMT following the close of the laycan window. Shipper shall pay the Laycan Cancellation Fee within fifteen (15) days from date of invoice. Laycan Cancellation Fees are subject to the same interest and setoff terms and conditions set forth in the first paragraph of Section 8(J) above.
- M. Demurrage:** CMT shall not be responsible for any demurrage or other damages for delay or loss of despatch time or any other damages incurred by any Vessel or Vessel Party or their Cargo for any cause, unless specifically agreed to in a separate written contract entered into between Vessel Party and CMT.
1. CMT acknowledges the vessel chartering concept "once on demurrage, always on demurrage." However, CMT does not recognize this chartering provision as applying to any demurrage responsibility or liability on the part of CMT for a force majeure event or any other cause. Such language is a contractual issue between the vessel owner and charterer/customer. All layday deductions for CMT, including force majeure events, will apply regardless of whether the Vessel is already on demurrage and CMT will not be liable for reimbursement of such demurrage or cost of delays, including consequential damages.
  2. All Vessel demurrage claims must be presented within two (2) months of the service provided by CMT and be accompanied by a supporting invoice and proof of payment of said demurrage. CMT shall have the right to conduct an independent audit of User's demurrage terms and original invoices. User shall pay to CMT despatch earned on services provided at one half (50%) of the demurrage rate. CMT shall not have any obligation to pay any demurrage claims that are presented after two (2) months of the performed service. CMT may offset any demurrage owed with despatch due to CMT. Invoices for demurrage and despatch are payable within thirty (30) days from date of invoice.
- N. Ground Storage of Cargo:** CMT agrees to provide outside ground storage at the rate provided for in the applicable Customer Contract. CMT shall not be responsible for spontaneous combustion or other damage to any stored Cargo. Upon request by the User, tractor work to shape, compact or periodically rearrange any stockpile in which the User's Cargo is stored will be provided, subject to such terms and conditions as mutually agreed upon by the CMT and User. User agrees that the CMT may also periodically groom Cargo stored at the CMT so as to prevent spontaneous combustion. CMT has no duty either to detect or routinely monitor to detect such conditions. CMT's grooming, shaping, compacting or rearranging of Cargo will in no way create any liability for CMT. If a condition of spontaneous Combustion or a significant rise in temperature should occur, User assumes full responsibility for all costs and damages thereby resulting; the responsibility of CMT being to promptly notify User of any such condition observed by CMT and User being responsible to promptly advise and direct CMT regarding the appropriate action necessary to extinguish any fires. If User fails to respond to such notice by

CMT or fails to promptly advise and direct CMT, then CMT, at the sole cost and expense of User, may, but is not obligated, to take appropriate action to extinguish any fires caused thereby. All such actions undertaken by CMT, whether under the direction of User or otherwise, shall be for User's account and will in no way create any liability for the CMT.

1. CMT shall not be responsible for loss or contamination or damage or destruction of any Cargo in its care, custody or control, whether in Storage or elsewhere. Furthermore, CMT shall not be responsible for loss of calorific content or loss of weight of any Cargo transferred or stored at CMT. User specifically acknowledges that normal variances in the measurement of quantity and weight of Cargo shipped in bulk exists and that the weights of Cargo determined by the National Cargo Bureau or a mutually agreed surveyor on behalf of User shall be used only for invoice purposes by CMT.
  2. In no event shall the use of CMT be construed as a lease or sublease agreement between CMT and User.
- O.** CMT reserves the right to refuse to service Vessels of customers or their agents who are past due in payments for services rendered, past due being thirty (30) days or more from date of invoice.
- P.** All provisions, terms and conditions of the Application for Berth and these Rules and Regulations including all attached Exhibits to the same are subject to change by CMT without notice.
- Q.** **Third Parties:** In the event the Vessel shall engage the services of third parties (including but not limited to stevedores, surveyors and suppliers) which require said third parties to enter the premises of CMT, the Vessel shall require said third parties to execute written agreements in which the third parties undertake to defend, indemnify and hold harmless the CMT Indemnitees from and against any and all claims, demands, liabilities, suits and causes of action, for injury or death or any persons employed by, contracted for, or working with said third parties, and for loss or damage to the property of said third parties. Further, said third parties shall cause their insurers and underwriters to name CMT Indemnitees as additional insureds on all of their policies of insurance with respect to any and all operations conducted at all times when third parties are on CMT's premises, and to waive all rights of subrogation against CMT Indemnitees. In the event the Customer fails to obtain the foregoing agreement from third parties, the Customer shall be required to defend, indemnify and hold harmless the CMT Indemnitees to the extent of the third party's obligations under this section.
- R.** **Hold Cleaning:** CMT will blade clean holds only. Any sweeping, spiking, shoveling or washing required to remove Cargo that cannot reasonably be retrieved by our mobile equipment will be the Vessel's responsibility. Once all Cargo has been rounded up, CMT will work with Vessel's crew on removal. Vessel hold cleaning will be called complete when the last hold has been blade cleaned. Any delays due to non-performance by the Vessel's crew will not be for CMT's account.
- S.** **Visitors and Delivery of Vessel Provisions:** Absent the prior written consent of CMT, no Visitor or Visitors, including, but not limited to, any User, crew members, Shipper, river transportation operator, launch service operator, master, owner, charterer, operator or agent, shall be allowed access to any of the CMT facilities, docks or buoys while any Vessel is moored or berthed at any such CMT facility, dock or buoy. CMT reserves the right to deny access to any Visitor or Visitors whom CMT, in its sole discretion, deems may result in injury, damage or loss to persons or property at CMT. Every person entering CMT facilities must sign in with CMT's office before proceeding to any Vessel or CMT building and shall furnish CMT with

identification acceptable to CMT. Any person or vehicle that enters CMT's facilities shall be subject to a search. Such Visitors, subject to the prior approval of CMT, may arrange for outside transportation for pickup and delivery at CMT. All Visitors must wear protective equipment, hard hats, safety glasses and life jackets, and, to the extent a Visitor(s) are allowed on CMT's dock, they must have and present to CMT a valid Transportation Workers Identification Card. Delivery of provisions or stores to any Vessels berthed at CMT shall require the prior approval of CMT subject to a determination by CMT whether such activities will interfere with Cargo operations or Vessel arrivals, departures or shifting. The Vessel Agent must be present when provisions are to be brought on to a Vessel. Any Visitor shall execute such releases and indemnity agreements as required by CMT as a condition to being allowed access to CMT facilities.

## **SECTION 9 – INDEMNITY/RISK ALLOCATION/POLLUTION**

- A.** CMT Indemnitees shall not be responsible for marine loss or damage to Cargo and/or Vessels including, but not limited to: (1) damage to Vessel parts or Cargo arising by reason of concealed or inadequately protected fastening, attachments, covers, and parts of the Vessel projecting into bulk Cargo; (2) damages incurred as a result of Vessel configuration; and/or (3) damage to Vessel's gear, equipment or structures caused by the nature, characteristics or quality of the Cargo being Loaded or Unloaded. CMT will receive, load, unload, transfer, handle, store or deliver Cargo in accordance with these Terminal Rules and Regulations.
- B.** The Vessel Party shall have the duty to be fully familiar with the environmental rules and regulations and laws in respect to the type and levels of all discharge allowed in United States rivers, coastal waters and air and for fully abiding by said rules, regulations and laws.
- C.** All Vessels and Users of CMT hereby agree to defend, indemnify and hold harmless CMT Indemnitees from and against any and all claims, actions, damages, liability or expense, including court costs and attorney's fees, in connection with the loss of life, bodily injury, disease, or any other injury of any type whatsoever, involving anyone, including visitors, and damage, contamination or loss of property, including the User's Cargo, incident to or resulting from their use of CMT facilities.
- D.** Vessels shall not violate any air emission standards in the vicinity of CMT.
- E.** Additionally, such obligation of Vessels and Users to indemnify, defend and hold harmless the CMT Indemnitees shall include, but not be limited to, loss, penalty, fine, clean-up costs, natural resource damage, remediation costs, removal costs, demurrage, administrative costs and any and all other costs and liabilities that arise directly or indirectly from pollution caused by (a) Vessel Party or other master or crew of the Vessel, whether in Loading and/or Unloading Cargo, or in the operation or management of the Vessel; or (b) a spill of the Cargo, fuel or any other pollutant of the Vessel or of any other party at any time while said Cargo, fuel, or pollutant is on board the Vessel or when said Cargo, fuel, or pollutant is within the care, custody or control of Vessel Party or those for whom Vessel Party is responsible except where such damages, losses, costs or liability are caused by the sole negligence of CMT Indemnitees. In the event of a pollution event arising directly or indirectly out of services being performed at CMT, Vessel Party shall, and shall cause its representatives and insurers, to immediately:
  - 1. Notify all local, state and federal authorities having jurisdiction of the pollution event;
  - 2. Notify CMT of all details of the pollution event;

3. Take all steps to eliminate the cause and/or source of the pollution;
  4. Take all steps to clean up the pollution;
  5. Take all steps required by law to restore the environment;
  6. Take all steps to mitigate damages of Vessel Party, CMT and third parties;
  7. Promptly pay, and pay for, all fines, damages and losses of their parties, to the extent required by law, and for all costs and expenses of cleanup;
  8. If necessary, advance or pay monies and funds required to be paid to the appropriate regulatory agencies;
  9. Consult with CMT and keep CMT constantly informed of all steps taken and contemplated to comply with provisions of this paragraph; and
  10. Cooperate with CMT in issuing statements to government authorities and media representatives.
- F.** Whether or not Vessel Party has complied with the provisions of the foregoing, CMT may, but shall not be required to, take over and manage all prevention, cleanup and restoration activities, all without derogation or diminution of Vessel Party's obligations under these Rules and Regulations, and with full reservation to CMT of all rights against the Vessel, Vessel Party or its insurers for reimbursement of costs, expenses and attorneys' fees. In such event, Vessel Party shall, and shall cause its insurers and any subcontractors, to make available to CMT all Vessels, personnel and equipment used or planned to be used in such prevention, cleanup and restoration efforts, all at the sole expense of Vessel Party.
- G.** In the event CMT takes over and manages such prevention, cleanup and restoration efforts, such action shall not be deemed a waiver, or constitute an estoppel by CMT or an admission of fault or responsibility on the part of CMT. CMT may, but is not required to, utilize its own and contracted personnel, vessels and equipment in such prevention, cleanup and restoration efforts, and may, at its discretion, allocate such resources as it, in its sole discretion, deems appropriate.
- H.** Without prejudice to and without waiving any of the indemnity, hold harmless and risk allocation provisions as set forth herein, any Cargo, Vessel or other damage, injury or loss claims shall be submitted by e-mail to CMT ([ops@cmt.us.com](mailto:ops@cmt.us.com)) for consideration. Claims not submitted within fourteen (14) days from the Vessel's departure from CMT shall be deemed waived, and Vessel Party agrees to defend, indemnify and hold harmless CMT for any such claim which is not timely presented to CMT as set forth in the preceding sentence.

#### **SECTION 10 – FORCE MAJEURE**

- A.** Neither party shall be under any liability of any kind or nature whatsoever (other than obligations of Customer to pay or expend money for services actually provided) for any loss, damage, delay or failure in performance, including, but not limited to, demurrage, delay, damages, deterioration of quality, shrinkage in quantity and/or loss of product, in the event that it should fail or delay to perform its obligations hereunder where such failure is directly or indirectly, wholly or partly, caused by Force Majeure event.

- B.** The term Force Majeure includes the following regardless of whether foreseeable or not: war, civil commotion, government order, labor trouble, labor shortage, unforeseen mechanical and electrical breakdowns, strike or lockout; flood, river freeze up, inability to obtain fuel or power; fire; act of God; resolution or order of government authority; or any other cause whatsoever beyond the reasonable control of the party affected thereby, whether or not of the same or similar nature.
- C.** A Force Majeure event shall not excuse a party from performing unless such party shall give written notice to the other party promptly upon learning of such Force Majeure, but in no event later than thirty (30) days subsequent to such event. Information as to the cause of inability to perform, and probable extent thereof, shall be included in such notice and shall be updated periodically during the continuance of the Force Majeure event. Failure to give such notice and furnish such information promptly shall be deemed a waiver of all rights for such period of time during which notice was not given. Upon removal of the cause, shipment shall resume at the specified rate.

#### **SECTION 11 – LIMITATION OF DAMAGES**

- A.** In no event shall CMT Indemnitees be liable for laytime, demurrage, detention, or damages of any kind for delay, loss of charter hire, extra charter hire payments, loss of profit, loss of market, business or economic loss, or any sort of consequential damages incurred by any Vessel for any cause, including the negligence, sole or concurrent of CMT Indemnitees, or the pre-existing condition or unseaworthiness of any Vessel.

#### **SECTION 12 – MISCELLANEOUS/LEGAL**

- A.** This document shall be controlling between the parties except and unless modified by a subsequent separate writing signed by representatives of CMT and the Vessel.
- B.** CMT reserves to itself the right to negotiate special arrangements, rules and rights under these Rules and Regulations with particular Vessels.
- C.** The “Commodity Transfer Terms and Conditions” attached as Exhibit 3 to these Rules and Regulations shall be provided to the Master of Ocean Vessels upon arrival at the Terminal. Exhibit 3 is intended only to supplement these Rules and Regulations and call specific attention to certain of the provisions CMT desires to highlight for the Vessel’s Master. In the event of a conflict between the body of these Rules and Regulations and Exhibit 3, the body of these Rules and Regulations shall control.
- D.** All disputes arising between CMT and the Vessel, that cannot be resolved by the parties, shall be submitted to the United States District Court for the Eastern District of Louisiana, sitting in a bench trial without a jury, or in the event that the United States District Court shall lack jurisdiction, then the courts of the State of Louisiana sitting in Convent, Louisiana, in a bench trial without a jury.
- E.** In any such proceeding should CMT be the prevailing party, CMT shall be entitled to recover reasonable attorney’s fees in addition to any loss or losses, damages, costs or expenses otherwise recoverable in such proceeding. The general maritime law shall apply to construction and interpretation of this agreement and wherein the general maritime law is not competent, the laws of the State of Louisiana.

- F.** If any court construing these Rules and Regulations shall determine that any provision herein is inconsistent with or contrary to any applicable law, statute, code, rule, or regulation, said provision shall be deemed to be modified to the extent required to comply with such law, statute, code, rule, or regulation, and the Rules and Regulations as so modified, shall remain in full force and effect. Further, the parties agree that if any court construing these Terminal Rules and Regulations shall determine that any provision of these Terminal Rules and Regulations is unenforceable or void as contrary to law or public policy, then such provision shall be deemed severed from these Terminal Rules and Regulations without affecting any remaining provisions hereof.

**EXHIBIT 1**  
**CONVENT MARINE TERMINAL**  
**OCEAN VESSEL APPLICATION FOR BERTH**

Application for Berth is hereby made on behalf of the Vessel described below. Unless specifically indicated to the contrary, the term "Vessel" as used in this Berth Application shall include the below named vessel, her owners, operators, managers, charterers, master and/or agents. This application is made in compliance with the Convent Marine Terminal Rules and Regulations and Convent Marine Terminal Rate Sheet (Exhibit 2) which are hereby incorporated into this Application for Berth as if set forth herein in full. Applicant certifies it has read the Convent Marine Terminal Rules and the Rate Sheet, and agrees to the same as a condition precedent to any agreement between Convent Marine Terminal and the Vessel for berth at Convent Marine Terminal's facility.

I certify that I am duly authorized to execute this agreement on behalf of the Vessel, subject to all the terms and conditions of this Application for Berth.

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Company Name, Address and Your Job Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**VESSEL INFORMATION**

Vessel Name: \_\_\_\_\_

Type of Vessel: \_\_\_\_\_

Gross Registered Tons: \_\_\_\_\_

Dead Weight: \_\_\_\_\_

Vessel Length: \_\_\_\_\_

Vessel Breadth: \_\_\_\_\_

Maximum Depth Loaded: \_\_\_\_\_

Air Draft: \_\_\_\_\_

## CARGO INFORMATION

Total Metric Tons of Cargo to be Loaded / Unloaded: \_\_\_\_\_

Hold Stowage:

Hold #1: \_\_\_\_\_ Hold #2: \_\_\_\_\_ Hold #3: \_\_\_\_\_

Hold #4: \_\_\_\_\_ Hold #5: \_\_\_\_\_ Hold #6: \_\_\_\_\_

Hold #7: \_\_\_\_\_ Hold #8: \_\_\_\_\_ Hold #9: \_\_\_\_\_

Hold Load Rotation - Maximum of Two Load Passes and Trimming of Two Holds (the forward most cargo hold to the bow and aft most cargo hold to the stern of the Vessel are not eligible for cargo trimming)

1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_ 4: \_\_\_\_\_

5: \_\_\_\_\_ 6: \_\_\_\_\_ 7: \_\_\_\_\_ 8: \_\_\_\_\_

9: \_\_\_\_\_ 10: \_\_\_\_\_ 11: \_\_\_\_\_ 12: \_\_\_\_\_

13: \_\_\_\_\_ 14: \_\_\_\_\_ 15: \_\_\_\_\_ 16: \_\_\_\_\_

17: \_\_\_\_\_ 18: \_\_\_\_\_ Trim 1: \_\_\_\_\_ Trim 2: \_\_\_\_\_

This application must be submitted to Convent Marine Terminal's offices for acceptance by Convent Marine Terminal. No agreement shall be binding until accepted by Convent Marine Terminal and all documentation as required to be submitted in connection with this Application for Berth is provided to the Terminal. Convent Marine Terminal may accept this Application for berth by separate writing or by assignment of the Vessel to berth.

All charges for services to be performed as set forth in this Application for Berth will be invoiced and paid in accordance with Convent Marine Terminal's Terminal Rules and Regulations.

**EXHIBIT 2**  
**CONVENT MARINE TERMINAL RATE SHEET**

|                                            |                                                                                                                                                                                                                    |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Line Handling During Mooring and Unmooring | \$2,500.00 per movement                                                                                                                                                                                            |
| Dockage                                    | \$0.45 per gross registered ton (GRT) per twenty-four (24) hour period, with partial days calculated pro rata in twelve (12) hour increments rounded up; or a minimum of \$9,000.00 per day, whichever is greater. |
| Other Services                             | CMT will quote as to availability and price of other services upon request.                                                                                                                                        |

**EXHIBIT 3**  
**CONVENT MARINE TERMINAL**  
**COMMODITY TRANSFER TERMS AND CONDITIONS**

*VESSEL NAME:* \_\_\_\_\_

*NAME OF VESSEL'S MASTER:* \_\_\_\_\_

*DATE and TIME AGREED TO:* \_\_\_\_\_

TO: *VESSEL MASTER*

Cargo shall be transferred at the Convent Marine Terminal facility (*the "Terminal"*) pursuant to the Terminal Rules & Regulations. In addition, before Cargo transfer begins, please review and check off each item to confirm your understanding and agreement, and sign the declaration on the last page:

- (1) An English speaking member of the crew, preferably an officer, must always be on duty to communicate with Terminal personnel.
- (2) It is the Vessel Master's responsibility to prevent any oil, oily ballast, sewage or other pollutants from being pumped or spilled overboard or discharged from the Vessel.
- (3) A Vessel desiring to dispose of ship-generated garbage shall arrange in advance with a company approved by the Captain of the Port, United States Coast Guard.
- (4) Mooring lines must be in a reasonably fit condition and will be tendered to keep from going slack. Tension winches will be set on manual brake.
- (5) Once positioned at the dock, the Vessel may not be moved either forward or backward as mooring lines are tendered. If the Vessel is moved, the Loading will be halted until the Vessel is shifted to its original position.
- (6) While at the dock, no repairs or maintenance will be performed without prior authorization from Terminal Management.
- (7) The Vessel will be maintained in trim and the engines in a condition such that it can leave the Berth on short notice (thirty (30) minutes or less). If the Vessel is ordered to leave the Berth, the Vessel shall acknowledge receipt of Cargo received on board at that time by signing an original ship's receipt.
- (8) The stowage plan and compartment loading sequence are to be confirmed and re-provided to the Terminal upon the Vessel's arrival. The Loading/Unloading plan must conform to Terminal procedures of a maximum of two passes per hold and no more than two (2) hold trims (the forward most cargo hold to the bow and aft most cargo hold to the stern of the Vessel are not eligible for cargo trimming).

- (9) Copies of the Certificate of Readiness / Hold Cleanliness and a Gas Free Certificate (if applicable) must be delivered to the Terminal Representative upon the Vessel's arrival at Berth.
- (10) If for any reason the Vessel requires additional Cargo after the Vessel advises that Cargo loading is complete, the Vessel will be responsible to the Terminal for a restart fee appropriate with the circumstances determined in the sole discretion of the Terminal, not to exceed \$5,000.
- (11) The progress of Cargo Loading and final or trim Cargo are to be determined by draft calculation. This process is to be performed by qualified Vessel personnel only.
- (12) Any ballast pump deficiencies and the time required to ballast or de-ballast is to be provided to the Terminal Representative upon the Vessel's arrival (the Vessel must remain in a seaworthy trim at all times). The Vessel air draft is also to be communicated to the Terminal Representative to determine whether de-ballasting can begin or continue upon commencement of the Loading/Unloading. Covers or deflection plates are to be placed over shore-side Vessel discharge pipes.
- (13) The Master of the Vessel shall inspect and supervise, continuously, all Cargo Loading or Unloading operations, shall be in charge thereof, and shall have sole responsibility for any damage to property or persons resulting therefrom. Any delay to the Terminal in Loading or Unloading resulting from the Vessel's operations or otherwise caused by the Vessel for any reason, shall result in the imposition of liquidated damages of \$5,000.00 for each hour of Loading and Unloading delay. This includes, but is not limited to, draft surveys and draft checks which exceed 1.5 hours.
- (14) Absent the prior written consent of the Terminal, no person or company shall be allowed access to any of the Terminal's facilities, docks or buoys while the Vessel is moored or berthed at any such Terminal facility, dock or buoy.
- (15) Delivery of provisions or stores to the Vessel while berthed at the Terminal shall require the prior approval of the Terminal subject to a determination, in the Terminal's sole discretion, whether such activities will interfere with Cargo operations or vessel arrivals, departures or shifting. The Master or an agent of the Vessel must be present when provisions are to be brought on to the Vessel.
- (16) The Master is to provide the Vessel's arrival draft, TPI, and sailing draft to the Terminal Representative.
- (17) No bunkers, diesel fuel, oils or water may be received by the Vessel while in Berth absent the prior approval of the Terminal.
- (18) The Vessel shall provide and rig a safety net and adequate illumination on the gangway.
- (19) Hurricane Alert – Cargo transfer operations will be suspended upon notice of U.S. Coast Guard Alert, notice to evacuate by local Civil Defense Authorities (St. James Parish Government) or Terminal Manager's evaluation of local weather conditions. All Vessels will be required to vacate the Berth and move to anchor at Vessel and Customer's expense.
- (20) Marsec Levels – Transfer operations may be suspended by U.S. Coast Guard or Homeland Security due to a change in local or national Marsec levels.

- (21) If rain, hail, snow, lightning or winds create a dangerous situation for property damage or personal injury, operations will be suspended until such time that the weather event has diminished or ceased.

The Vessel, its Master and crew hereby agrees to abide by the above terms and conditions regarding Cargo transfer. Upon execution of this document, Cargo transfer may proceed.

**VESSEL MASTER**

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**VESSEL DECK OFFICER**

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**CMT REPRESENTATIVE**

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_