



TERMINAL RULES AND REGULATIONS

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1. GENERAL RULES AND REGULATIONS

1.1 INTRODUCTION

These Terminal Rules and Regulations (the “**Rules**”) are published by NOLA Terminal LLC (“**NOLA TERMINAL**”) and contain rules, regulations, rates and other charges applicable to the use of NOLA TERMINAL’s terminal located along the right descending bank at LMR Mile 59 as well as the terminal’s mooring dolphins and related tie-off capabilities, anchorages and all other associated facilities (collectively, the “**Terminal**”).

NOLA TERMINAL is a privately owned company and is not affiliated or associated with any city, state or federal agency. Therefore, use of the Terminal is by private contract by and between NOLA TERMINAL and contracting parties.

1.2 APPLICATION OF THE RULES; AMENDMENTS TO THE RULES

The rates, rules and regulations contained in these Rules shall apply equally to all Terminal users (“**Users**”) and shall apply to all services provided on or after the effective date shown on these Rules or any amendments thereto.

Amendments to these Rules may be issued from time to time. These Rules are subject to change without notice at NOLA TERMINAL’s discretion.

1.3 CONSENT TO TERMS OF THE RULES

The use of any portion of the Terminal shall constitute the Users’ consent to the terms and conditions herein, and evidence an agreement on the part of all vessels, their owners and agents, owners of cargo

and all interested parties in cargo being handled at the Terminal and all other Terminal Users to pay all charges specified in these Rules and be governed by all rules and regulations herein contained. Notwithstanding anything to the contrary herein, no User may utilize any part or aspect of the Terminal without NOLA TERMINAL's prior written approval (e-mail permitted).

1.4 INTERPRETATION

NOLA TERMINAL shall be the sole judge as to the interpretation of these Rules.

1.5 LOCAL AUTHORITY

The Terminal is within the jurisdiction of the Plaquemines Parish Port Harbor and Terminal District ("Plaquemines Port District"), including all rules, regulations and requirements of the Plaquemines Port District. NOLA Terminal's rates and charges set forth in these Rules are net of, and are therefore in addition to, all other rates, charges, fees and impositions that may be imposed by the Plaquemines Port District or other governmental and non-governmental agencies.

1.6 HOURS OF OPERATION

The Terminal operates twenty-four (24) hours a day, every day throughout the year except for Holidays, defined as: New Year's Day, Mardi Gras Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

When any of the above Holidays fall on Sunday, the following Monday shall be observed as the Holiday. When one of the above Holidays falls on Saturday, the preceding Friday will be observed as the Holiday.

1.7 HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

All Terminal Users, including such User vessels' owners, operators, charterers, managers and agents, and other users of the Elevator, and their agents (all the foregoing collectively "**Indemnitors**"), specifically and without limitation, hereby agree to defend, indemnify and hold harmless NOLA TERMINAL, its affiliated and related companies, and the respective directors, officers, employees, contractors, subcontractors, agents, assets and insurers of all of the foregoing, and all persons, firms or other entities which may manage, own or control the operations of the Terminal and wharf, and the respective directors, officers, employees, contractors, subcontractors, agents and insurers of all of the foregoing (individually and collectively "NOLA TERMINAL Indemnitees"), from and against any and all claims, actions, damages, losses, liabilities and expenses, including court costs and attorney's fees (collectively "**Claims**"), in any way related to the User vessel's presence on the Mississippi River or at its anchorages and berths and/or in any way related to Indemnitors' operations at or use of the Terminal, NOLA TERMINAL Indemnitee or vessel gangways or other NOLA TERMINAL Indemnitee or vessel facilities, equipment and property, and/or third party equipment and property, including, but not limited to, claims for loss of life, bodily injury, damage to or loss of property, pollution, demurrage, lost despatch, economic loss and government fines and penalties, regardless of any sole or partial negligence, fault or strict liability by NOLA TERMINAL Indemnitee, causing or contributing to the losses, damages or Claims. No other provision of these Rules or any contract executed by NOLA TERMINAL Indemnitee with the Users will be deemed to limit the scope or application of this Section 1.7, unless agreed in writing by NOLA TERMINAL, with specific reference to this Section 1.7.

1.8 NON-LIABILITY OF NOLA TERMINAL, LLC INDEMNITEES

The NOLA TERMINAL Indemnitees shall not be liable for any loss of or damage to cargo or to the River Barges, Ocean Vessels, line-haul towing vessels, tugs, ships, vessels or other vessel or watercraft berthed, in the process of being berthed or otherwise working at or adjacent to the Terminal or to any watercraft or transfer rig, whether caused by frost, heat, flood, rain, the elements and/or any other weather-related conditions (including, but not limited to, tropical storms and hurricanes), evaporation, natural shrinkage, wastage or decay, insects, birds, rodents, and/or other animals, logs and/or other river debris, acts of God, strikes, shortage of labor, work stoppages, riots, civil commotion, insurrection, war, acts or failures to act of any governmental entity, acts of terrorism, any consequence arising therefrom, concealed damage, leakage, variation in weights or losses in weight whether occurring while cargo is in storage or is being handled, or for failure to detect or remedy same, and/or any causes beyond NOLA TERMINAL's control.

1.9 DELAY DAMAGES

NOLA TERMINAL will use commercially reasonable effort under the prevailing circumstances to receive, load, unload, handle or deliver cargo, but does not undertake to do so within any particular time period except to the extent guaranteed in a written agreement to which NOLA TERMINAL is a direct counter-party. In furnishing any services or performing any acts hereunder, NOLA TERMINAL shall not be liable for any freight, despatch, demurrage, or other damages for delays to any River Barge, Ocean Vessel or other watercraft, including, but not limited to, standby time, loss of despatch time, demurrage or for any other delay damages incurred by any User, for any cause whatsoever, even if such delay is the fault of a NOLA TERMINAL Indemnatee, unless otherwise guaranteed in a written contract to which NOLA TERMINAL is a counter-party.

1.10 SUITABILITY OF CARGO

NOLA TERMINAL reserves the right, without any responsibility for any loss, damage, or demurrage that may arise, to refuse any cargo because in NOLA TERMINAL's sole discretion, such Cargo is un-merchantable or in an unfit condition for loading, unloading, storage, transfer, transportation or handling.

User shall provide NOLA TERMINAL with Material Safety Data Sheets as well as a description of the chemical composition of the subject commodity similar to IMO cargo declaration for all cargo carried on inbound River Barges, Ocean Vessels or any other vessel or watercraft destined for the Terminal in whatever capacity (*i.e.*, for loading or offloading of cargo). If actual specifications are not available, User shall provide anticipated cargo specifications along with all supporting information prior to docking at the Terminal.

1.11 CARGO SAMPLING SERVICE

NOLA TERMINAL shall not, under any circumstances, be responsible or liable for sampling services, any accuracy or inaccuracy if provided, or any lack thereof.

1.12 LAW AND JURISDICTION

Any and all disputes, claims, liability (including, but not limited to, absolute and strict liability), causes of action, damages (including, but not limited to, punitive damages), or expenses (including, but not limited to, the payment of reasonable attorney fees, expert witness fees and litigation expenses regardless of type), directly or indirectly arising out of, related to, and/or resulting from the User's operation at, or use

of, any part of the Terminal, which cannot be resolved amicably, shall be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of Louisiana, New Orleans, Louisiana Division. If that court lacks subject matter jurisdiction, then exclusive jurisdiction shall rest in the Louisiana Twenty-Fifth Judicial District Court in Plaquemines Parish, Louisiana. Said disputes and/or causes of action shall be resolved pursuant to the laws of the State of Louisiana WITHOUT A JURY. In the event NOLA TERMINAL must move to dismiss a lawsuit filed in violation of this provision, the reasonable attorneys' fees and costs incurred by NOLA TERMINAL in so moving shall be paid by the plaintiff(s) to said lawsuit.

1.13 REMEDIES FOR ENFORCEMENT

NOLA TERMINAL shall have all remedies available to it at law to enforce these Rules. In the event of any legal proceedings to enforce any provision of these Rules, NOLA TERMINAL shall be entitled to recover its expenses incurred in such proceedings, including, but not limited to, payment of reasonable attorney fees, expert witness fees and litigation expenses regardless of type.

1.14 ENTIRETY OF AGREEMENT

NOLA TERMINAL reserves the right, but is not required, to enter into confidential agreements with Users of the Terminal which may alter, amend or otherwise supplement the terms and conditions as found in these Rules. In case any portion of any provision or any one or more of the provisions contained in these Rules should be held or determined invalid or illegal, the validity, legality and enforceability of the remaining portion of any such provision and the other remaining provisions or underlying rights and obligations referred to herein shall not in any way be affected, modified or impaired thereby.

1.15 NOLA TERMINAL'S RIGHT OF EXCLUSIVITY IN SCHEDULING

All cargo handling, marine operations, barge unload scheduling, and logistics of any kind in general, whether via water through barges or any other floating vessel or via land through trucks, trailers or any other vehicle, shall be solely managed and determined by NOLA TERMINAL in its sole discretion. No barges, vessels, trucks or trailers of any kind shall be scheduled or otherwise arrive on site at NOLA TERMINAL for any offload, pickup or any other activity at the Terminal without NOLA TERMINAL's prior written confirmation (e-mail permitted).

2. OCEAN VESSEL REQUIREMENTS ASSOCIATED WITH CARGO HANDLING OPERATIONS

2.1 NOMINATION; ARRIVED OCEAN VESSELS

(a) Ocean Vessel Nomination

Nomination of an "Ocean Vessel" shall be furnished by the "Shipper" to the Terminal via e-mail between 7:30 a.m. and 4:00 p.m. Mondays thru Fridays, excluding Holidays, not earlier than thirty (30) days and not later than fourteen (14) days prior to the ETA of the Ocean Vessel.

Shipper's nomination of all Ocean Vessels shall be made using the form attached as **Exhibit A** to these Rules (the "Vessel Nomination Form").

Acceptance of a nominated Ocean Vessel shall be provided in writing to Shipper within one business day of nomination. Acceptance by Terminal of a nomination of an Ocean Vessel shall be evidenced by a confirming e-mail from the Terminal to Shipper.

(b) Arrived Ocean Vessels

All Ocean Vessels (either directly or through their agent) intending to utilize the Terminal's facilities and services shall file a Berth Application by e-mail. A copy of the form Berth Application to be utilized is found at **Exhibit B** to these Rules (the "**Berth Application**"). An executed original of the Berth Application must follow by U.S. Mail. The Berth Application sent by e-mail must be received by the Terminal between 7:30 a.m. and 4:00 p.m. Mondays through Fridays, excluding Holidays, and no later than seven (7) days prior to the ETA of the Ocean Vessel.

Terminal's acceptance of a Berth Application shall be evidenced by Terminal's issuance to the Ocean Vessel (either directly or through the Ocean Vessel's agent) of a Berth Application Acceptance.

Any Ocean Vessel arriving and submitting a Notice of Readiness, as defined below, shall have all accompanying documentation and submitted payment for all pre-paid items before berthing. In addition, all cargo must have arrived at the Terminal and be either stored on Terminal ground storage or in "**River Barges**" (for direct-transfer operations) before an Ocean Vessel will be permitted to berth at the Terminal.

With respect to any Ocean Vessel expected to arrive at the Terminal for the loading of export cargo, such vessel shall, no later than three (3) working days after the departure from the Terminal, provide the Terminal with a full and correct freighted copy of the bill of lading including shipper, consignee and notifying party. Any bill(s) of lading, mate's receipt or other shipping document issued in connection with the transportation of the cargo shall have no effect or control over the services to be provided by the Terminal.

2.2 NOTICE OF READINESS

(a) Requirements for Issuing a Notice of Readiness

In Order for an Ocean Vessel to submit the Ocean Vessel's Notice of Readiness, the Ocean Vessel must do the following(collectively, the "**Notice of Readiness**"):

- (1) submit the Berth Application to NOLA TERMINAL;
- (2) pay all Ocean Vessel fees as required by NOLA TERMINAL's pro forma invoice;
- (3) be cleared by U.S. Customs and Boarder Protection;
- (4) ensure that all holds on the subject Ocean Vessel have been inspected and found suitable by a marine surveyor;
- (5) provide NOLA TERMINAL with a copy of the subject stowage plan;
- (6) ensure that the Shipper has delivered the cargo to be loaded to the subject Ocean Vessel to the Terminal;
- (7) arrive at the closest available position in this order:
 - a. NOLA TERMINAL designated loading berth;
 - b. NOLA TERMINAL designated layberth;

- c. Davant Anchorage; or
- d. Alternate nearest available anchorage, within the limits of Belle Chasse Anchorage (LMR 75.2) to the North and Point Celeste Anchorage (LMR 49.8) to the South.
- e. Under no circumstances will NOLA TERMINAL acknowledge a Notice of Readiness for any Ocean Vessel outside of the Plaquemines Parish Port District, whether located in U.S. territorial waters, off the U.S. coast in the Gulf of Mexico or on the high seas.

(8) provide the Terminal with notice of the Ocean Vessel's readiness to commence cargo handling operations.

2.3 VESSEL ACCESS

If the Ocean Vessel's personnel or other visitors, including the Ocean Vessel's agent, desire to leave or board the Ocean Vessel for any non-emergency reason, twenty-four (24) hours prior written notification to NOLA TERMINAL must be provided and include a list of the: (a) name, (b) telephone number and (c) reason for visit of each Visitor to the Ocean Vessel and Ocean Vessel personnel leaving the Ocean Vessel provided along with a crew list. Each Visitor must have a form of identification acceptable to NOLA TERMINAL. Said list shall be supplemented as needed and furnished in advance of the visit to the Terminal in writing between 9:00 a.m. and 4:00 p.m. Mondays through Fridays and between 9:00 a.m. and 12:00 noon Saturdays, excluding Holidays as defined herein (the "**Visitor List**").

(a) Emergency Access. Notwithstanding anything in the prior section to the contrary, in the event of an emergency, including medical-related emergencies, all requirements of Section 2.3 must still be met except that an authorized agent of NOLA Terminal may waive the 24-hour prior written notification clause or any other provisions of Section 2.3 in NOLA Terminal's sole discretion.

2.4 SHIFTING AND READINESS

Ocean Vessels 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 Ocean Vessel shall remain prepared and be properly crewed to promptly carry out Cargo transfer operations within or between Terminal Berths, and undock and vacate the Berth on order of the Terminal twenty-four (24) hours a day, seven (7) days a week. For purposes of these Rules, "promptly" shall mean within thirty (30) minutes of notice being tendered by the Terminal.

In the event that the Ocean Vessel fails to comply with these requirements, Terminal management may, in its sole discretion, and without liability, reject the subject Ocean Vessel or order the subject Ocean Vessel to vacate the berth. If the Ocean Vessel is ordered to Berth and a delay in delivery of the Ocean Vessel to Berth occurs in excess of three (3) hours from the time that the Ocean Vessel was ordered to Berth, then the Ocean 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 Ocean Vessel is moored in or vacates the Berth, as the case may be, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages.

2.5 BERTH ASSIGNMENT; DOCKAGE; TOWAGE AND ANCILLARY FEES

Terminal operations may be scheduled at Terminal's Berths and in any combination thereof. Prior to the issuance of the particular Berth assignment, the Ocean Vessel (either directly or through its agent) must advance pay NOLA TERMINAL for the Dockage fees as provided for in **Exhibit C** as well as advance pay such other amounts as NOLA TERMINAL may deem reasonable based upon the services which are likely to be provided to the subject Ocean Vessel and as per the rate schedule found in **Exhibit C**. E-mail notice of estimated charges will be sent to the Ocean Vessel's agent in advance and payment must be received prior to mooring the Ocean Vessel at its assigned Berth.

2.6 REFILING

If any Ocean Vessel that has filed at Terminal is ordered to Berth by NOLA TERMINAL and is unable or refuses to accept a Berth, due to any reason whatsoever, or otherwise fails to comply with these Rules, NOLA TERMINAL may, at its sole discretion, cancel the Ocean Vessel's original filing. If filing is cancelled, the Ocean Vessel must refile and will be assigned a rotation in the Terminal lineup based on the new filing time.

2.7 VESSEL ROTATION

Terminal management may alter the turn of the Ocean Vessels for loading or unloading, when, in Terminal's sole judgment, it is in the Terminal operations' best interests.

2.8 OCEAN VESSEL SAFETY AND SECURITY

All Ocean Vessels shall furnish safe ingress and egress at all times while in Berth. When an Ocean Vessel is berthing at any of the Terminal facilities, the Ocean Vessel's Master shall be solely responsible for the safety of the Ocean Vessel and her crew. Any Ocean Vessel in Berth shall at all times maintain appropriate officers and crew aboard the Ocean Vessel in order to maintain an alert watch and respond to emergencies. Moreover, Terminal's written consent, as described more fully in these Rules, shall be obtained before any crew or any other individual will be allowed on any Terminal Facilities, docks and/or buoys.

(a) Compliance. The Ocean Vessel shall comply with the following:

(1) The engineering plant and vessel trim must be maintained in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth (less than 20 minutes).

(2) Guards must be installed to prevent ballast water from contacting personnel, equipment or the dock.

(3) All personnel shall wear life jackets, hard hats and all generally accepted safety equipment and gear while on the docks at all times. It is the Ocean Vessel's responsibility to provide life jackets, hard hats and all generally accepted safety equipment and gear. Vessel crew members shall adhere to this requirement when on the dock and when transiting any walkway to and from the docks.

(4) In compliance with United States Coast Guard, Department of Homeland Security directives, 33 CFR 105, NOLA TERMINAL has developed a Facility Security Plan ("FSP"). According to NOLA TERMINAL's FSP, certain areas of the Terminal's landside facilities and all of NOLA TERMINAL's

docks, berths and mooring areas are considered restricted areas. Anyone or anything entering into the Terminal is subject to screening, inspection and/or search.

2.9 SAFE BERTH

The Master of the Ocean Vessel shall be solely responsible for determining if the depth of water (at any tide or river stage) is sufficient for the Ocean Vessel, the Terminal having no responsibility therefore and the Terminal 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 Ocean Vessel may operate. Furthermore, NOLA TERMINAL shall not be deemed to warrant the safety of any of the Terminal's berths, docks, anchorages, facilities, walkways or approaches thereto.

2.10 WEATHER CONDITIONS

When, in the Terminal management's opinion, weather conditions threaten the safety of any moored Ocean Vessel and/or the structural integrity of any part of the Terminal, transfer operations will be suspended and any Ocean Vessel shall vacate the Berth immediately when requested by the Terminal management to do so and until such time as weather conditions permit it to return.

2.11 CARGO OR DEBRIS ON DECK OF OCEAN VESSEL

Ocean Vessels shall not arrive at the Terminal with cargo or any other obstruction on its deck. The Ocean Vessel agrees that if notified of such condition, it shall be the Ocean Vessel's sole responsibility to clean and remove any such product which renders the Ocean Vessel's deck hazardous to the safety of any person. Should the corresponding Ocean Vessel fail to promptly clean and remove product from its deck, NOLA TERMINAL reserves the right, but not the obligation, to clean and remove the product from the Ocean Vessel's deck, which service and charges shall be solely for the Ocean Vessel's account. Alternatively, NOLA TERMINAL may reject the Ocean Vessel and refuse to accept the Ocean Vessel. Any time used to clean and remove such product from the Ocean Vessel's deck in accordance with this Section 2.11 shall not count against laytime.

2.12 LINE HANDLING

The master and crew of every Ocean Vessel shall provide assistance in handling lines and operating deck machinery. An English-speaking deck officer must be available to ensure timely response to Terminal representatives' directives relative to handling lines and related tie-off accessories. Terminal agents will position lines on the shoreside. Line handling for docking and undocking of Ocean Vessels shall be assessed at the rate provided in Exhibit C.

2.13 USE OF TUGS

When an Ocean Vessel is entering or leaving the Berth, NOLA TERMINAL shall retain tugs to assist. The cost of assisting tugs (as set forth on Exhibit C) shall be at Ocean Vessel's sole expense and account without refund or credit against any charges due and owing the Terminal. If, in Terminal management's opinion, the weather or other prevailing conditions require, each Ocean Vessel upon entering and leaving or lying at Berth (including shifting within the Berth) may be required to make use of additional tugs, depending on the Ocean Vessel's size and draft, with said additional tugs being at Ocean Vessel's sole risk and expense. A one (1) hour waiting period from the call-out time is allowed. Any additional time will be invoiced at the current standby rate. If called out and not used, the current reporting fee will apply.

2.14 CONTINUOUS READINESS

Assignment of Berth under these Rules is predicated upon Ocean Vessel's continuous readiness twenty-four (24) hours a day, seven (7) days a week to receive or discharge cargo at Terminal's full normal rate, throughout the entire time in Berth and compliance with Terminal management's directions, including shifting within or between anchorage sites or Berths. Any delay in loading or unloading caused by the Ocean Vessel or refusal to follow directions of Terminal management, including an order to vacate the Berth, shall jointly and severally subject the Ocean Vessel and Shipper to a charge of \$5,000 per hour (with partial hours prorated) of delay which shall be assessed as agreed liquidated damages regardless of any intervening circumstances of any nature.

2.15 STOWAGE

The Ocean Vessel shall be solely responsible for safely stowing its cargo and must be self-trimming bulk carriers. Should additional trimming be requested or required by Terminal, all additional fees shall be for the Ocean Vessel's account.

2.16 REPAIRS

Once the Notice of Readiness has been tendered, no repairs that would impede the Ocean Vessel's movement or which would interfere with its cargo transfer operations or affect safety shall occur.

2.17 WATER

Water, when available, will be furnished at the charge provided in Exhibit C. Prior approval and coordination by Terminal management shall be required for water delivered by River Barge.

2.18 BUNKERS

Absent Terminal's prior approval in writing (e-mail acceptable), Ocean Vessels may not receive bunkers, diesel fuel or oils while at Berth.

2.19 VACATING BERTH UPON COMPLETION OF LOADING OR UNLOADING

Ocean Vessel shall vacate the Berth within one (1) hour of completing cargo loading or unloading. If an Ocean Vessel refuses or fails to vacate the Berth when ordered to vacate, NOLA TERMINAL shall be entitled to charge and recover as agreed liquidated damages from the Ocean Vessel, the sum of \$5,000 per hour (with partial hours prorated) beginning one hour after the Ocean Vessel receives notice to vacate and continuing until the Ocean Vessel vacates the Berth regardless of any intervening circumstances of any nature. If the Ocean Vessel fails to timely vacate the Berth, the Ocean Vessel will be subject to, in addition to the liquidated damages above, to all costs (including but not limited to attorney fees) and expenses in connection with moving the Ocean Vessel, which costs and expenses (and liquidated damages) shall be for the Ocean Vessel's sole account and risk.

3. RIVER BARGE SCHEDULING AND ASSOCIATED CARGO HANDLING OPERATIONS

3.1 SCHEDULING OF INBOUND RIVER BARGES

See Section 1.15 above ("**NOLA TERMINAL'S RIGHT OF EXCLUSIVITY IN SCHEDULING**") which is applicable to all aspects of these Rules. In addition, by the first day of each calendar month, Shipper shall provide the Terminal with a rolling three-month inbound River Barge forecast including a week-by-week schedule

of River Barges to be delivered to the Terminal during the upcoming month (the “**Barge Unloading Schedule**”).

Absent NOLA TERMINAL’s express written consent, Shipper may not schedule more River Barges on the Barge Unloading Schedule than are reasonably needed to ratably transport Shipper’s minimum tonnage to the Terminal in accordance with Shipper’s commitment with NOLA TERMINAL.

Absent NOLA TERMINAL’s express written consent (e-mail permitted), Shipper may not deviate from the Barge Unloading Schedule more than 10% of total tonnage on any given week or 25% in any given month.

For River Barges arriving at the Terminal outside of their scheduled delivery, NOLA TERMINAL may provide alternate discharge arrangements at additional costs for Shipper’s account.

In addition to the foregoing, the Shipper (either directly or through Shipper’s third-party “**Barge Carrier**” of choice) shall provide the following information not later than seven (7) days prior to the River Barges’ ETA: for each River Barge, the individual barge numbers, tonnage, loading drafts, name of carrier, ETA and the type of cargo carried or to be carried, which report shall be subsequently updated on the Monday of each week until such River Barges are received into the Terminal.

Should the Shipper’s River Barges be loaded with cargo downriver from the Port of Baton Rouge they shall be delivered to NOLA TERMINAL within 10 days of loading.

3.1.1 Outside Cargo Handling

Further notwithstanding anything in these Rules to the contrary, in the event that NOLA TERMINAL permits its customer to use its own cargo handling equipment for any purpose (including but not limited to loading/unloading or product/cargo movement of any kind) at the NOLA TERMINAL facility, NOLA TERMINAL reserves the right to charge a fee per short ton (with an applicable minimum charge) for bulk cargo and to charge a fee per day for other non-bulk cargo handling equipment (*e.g.*, break bulk cargo, liquids, dredging operations, etc.), among other fees as applicable and determined by NOLA TERMINAL. In furtherance of the preceding sentence, no customer shall be permitted to haul or otherwise bring any of its own or contracted or rented cargo handling equipment onto NOLA TERMINAL property without a fully-executed Master Service Agreement or similar contractual agreement in place prior to the customer, its contractor or its agent entering the Terminal. Drop-shipments of cargo handling equipment, gear or items related to cargo handling or terminal operations are prohibited.

3.2 MOORING OF BARGES

NOLA TERMINAL is a private terminal facility and is closed to mooring of any vessel without permission as provided herein. Barge Carriers shall obtain NOLA TERMINAL’s prior approval before their Towing Vessels and River Barges enter the Terminal’s facility, including its Berth, docks, buoys, mooring dolphins, etc. No less than twenty-four (24) hours advance notice of the foregoing shall be provided by Shipper or Shipper’s Barge Carrier to NOLA TERMINAL’s Logistics Manager. Any Barge Carrier delivering River Barges to the Terminal shall be responsible for mooring the River Barges in accordance with these Rules and any other regulations promulgated by the Plaquemines Parish Port District and United States Coast Guard. If such approval by NOLA TERMINAL is granted, Shipper’s Barge Carrier is required to comply with NOLA TERMINAL’s prescribed safety rules and personal protective equipment requirements and follow NOLA TERMINAL’s Facility Security Plan. NOLA TERMINAL reserves the right to levy a user fee.

All River Barges Shipper's Barge Carrier brings into the Terminal must be jointly inspected by Shipper's Barge Carrier and NOLA TERMINAL prior to being placed in the Terminal (such joint inspection may sometimes be hereinafter referred to as the "**Joint Inspection**").

- (a) Joint Inspection Protocol. The Joint Inspection shall include:
- (1) Check for water in all voids, including wing tanks, bow and stern compartments;
 - (2) Inspect above water areas for signs of recent and/or major damage;
 - (3) Inspect grain doors on covered barges to ensure that they are in the closed position;
 - (4) Inspect deck fittings to ensure all are present;
 - (5) Observe draft and trim of loaded barge(s) to determine that barge(s) are safe for tie-off and/or mooring; and
 - (6) Inspect all deck areas and walkways for cargo or other debris that may in any way compromise personnel safety.

(b) Mooring Requirements. A River Barge moored to another River Barge, a mooring or spar barge, a vessel, a wharf, or a pier, will be secured as near as practicable to each abutting corner of the River Barge being moored by:

- (1) Four part wire rope of at least 7/8" diameter with an eye at each end of the rope passed around the timberhead, cavel or button;
- (2) A mooring line of natural or synthetic fiber that has at least 75 percent of the breaking strength of four part 7/8" diameter wire rope; or
- (3) Fixed rigging that is equivalent to four part 7/8" diameter wire rope.

Any River Barges arriving at the Terminal without lines, wire or stationary rigging meeting the requirements set forth above will not be accepted by the Terminal until such time as proper equipment is furnished.

3.3 CONDITIONAL ACCEPTANCE OF RIVER BARGE

In the event a Barge Carrier tenders a River Barge for mooring within the Terminal's facility, including the Terminal's mooring dolphins which, based on the Terminal's inspection and sole discretion, is: (1) found to be in a leaking or otherwise damaged condition during the Joint Inspection thereby rendering such River Barge unsuitable or unfit for mooring, cargo handling operations and/or is otherwise unseaworthy; or (2) lacking adequate freeboard or otherwise improperly loaded with cargo such that mooring operations and/or cargo handling operations may be unsafe, then NOLA TERMINAL may, in its sole discretion, refuse to accept such River Barge at the Terminal, or, alternatively, NOLA TERMINAL may elect to "**Conditionally Accept**" such River Barge. In the event NOLA TERMINAL agrees to "Conditionally Accept" a River Barge, NOLA TERMINAL will provide notification to the Barge Carrier by e-mail confirming that NOLA TERMINAL will accept the subject River Barge, but the acceptance of the River Barge shall be a "Conditional Acceptance" only.

(a) Terms of Conditional Acceptance. If NOLA TERMINAL Conditionally Accepts a River Barge, the following allocation of risk, indemnity agreement and waiver of rights shall apply:

(1) The Shipper and the Barge Carrier shall be jointly and severally responsible for the River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition resulting in the Terminal Conditionally Accepting the River Barge, and Shipper and the Barge Carrier shall be jointly and severally responsible for any sinking, loss of and damage to the River Barge and the cargo contained therein, regardless of fault and regardless of the fact that the River Barge is in the care, custody and/or control of NOLA TERMINAL at the time of its sinking, loss or damage;

(2) The Shipper and the Barge Carrier shall be jointly and severally responsible for and shall assume all liability for damage and loss sustained to property, cargo and for personal injury, illness and death claims which are caused in whole or in part by the River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition;

(3) The Shipper and the Barge Carrier shall jointly and severally defend (including the payment of reasonable attorneys' fees, court costs, expert witness fees and all litigation expenses regardless of type), indemnify and hold harmless the NOLA TERMINAL Indemnitees from and against any and all claims for: (1) damage to and/or loss of the River Barge and its cargo, regardless of the cause or causes thereof; and (2) for all other personal injury, illness, death and property damage which is caused in whole or in part by the River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition; and

(4) Barge Carrier and Shipper hereby agree that notice of the River Barge's leaking, damaged, lack of freeboard and/or improperly loaded condition resulting in such River Barge being Conditionally Accepted by NOLA TERMINAL shall be considered "privity and knowledge" by the Barge Carrier and Shipper of the River Barge's condition so as to waive any right the Barge Carrier and/or Shipper may have to limit liability pursuant to the Shipowner's Limitation of Liability Act, 46 U.S.C. 30501, et. seq. In addition, Barge Carrier and Shipper hereby agree the River Barge is being handled at the Terminal pursuant to a "Personal Contract," and it is the intention of the Barge Carrier, Shipper and NOLA TERMINAL that neither the Barge Carrier nor Shipper shall be entitled to limit their liability to NOLA TERMINAL in any respect under the afore-referenced Shipowner's Limitation of Liability Act.

3.4 CARGO ON DECK OF RIVER BARGE; VGP REPORTING

Barge Carrier acknowledges that any River Barge arriving at the Terminal with cargo on its deck may constitute a hazardous and unsafe condition. Barge Carriers agree that if notified of such condition, the Barge Carrier shall be responsible to clean and remove any such product which renders the River Barge's deck hazardous to any person's safety. Should the Barge Carrier fail to promptly clean and remove product from any such River Barge's deck, the Terminal reserves the right, but not the obligation, to clean and remove the product from the River Barge's deck, which service and cost shall be solely for Shipper's account. Alternatively, the Terminal may reject the River Barge and refuse to accept it at the Terminal.

The Barge Carrier and Shipper shall coordinate and be solely responsible for all required inspections for cleanliness and compliance with all local, state and federal laws and regulations relative to a River Barge's fitness. All run off reporting and other environmental compliance and reporting shall be the Barge Carrier's and Shipper's sole responsibility. Any EPA, regulatory or court-imposed fines levied against

Terminal because of the Barge Carrier's and Shipper's non-compliance and/or failure to report shall be for Shipper's sole account.

3.5 RIVER BARGE SHIFTING CHARGES

Reserved.

3.6 RIVER BARGE COVER HANDLING

Reserved.

3.7 DISCHARGING STACKED COVER RIVER BARGES

Reserved.

3.8 BARGE RELEASE

Once loading or unloading of a River Barge has been completed, as determined by an authorized Terminal agent, the River Barge must be picked up within seventy-two (72) hours of Terminal's transmittal of notice to the Barge Carrier that the River Barge must be removed from the Terminal. If a River Barge is not removed within the time limit, Terminal management may, at its sole election, arrange to have the River Barge shifted to a nearby commercial barge fleet, assuming fleeting space is available, at Barge Carrier's sole risk and expense. If the Barge Carrier has been instructed by the Terminal to pick up its River Barges and removal has not been fully accomplished within seventy-two (72) hours, an additional charge will be assessed. The charge will be assessed until the River Barges are removed from Terminal's facility.

3.9 ADDITIONAL CHARGES; PAYMENT REMITTANCE

NOLA TERMINAL may access such other charges to Barge Carriers as detailed herein or as otherwise agreed to in a writing between the parties. Barge Carriers shall remit payment for all services NOLA TERMINAL provides within ten (10) days from the date of invoice.

4. INSURANCE

All Users, agents and other barge and other vessel vendors must obtain and maintain insurance during the duration of their work hereunder as set forth below:

(a) Workers Compensation / Employers Liability:

(1) Statutory workers compensation in compliance with all applicable state and/or federal laws in which the work may be performed by the agents/ship vendors hereunder, with a minimum Employer's Liability policy limit of USD \$1,000,000.00 each person and each occurrence.

(2) Include United States Longshore and Harbor Workers' Compensation Act coverage where applicable.

(3) Include voluntary compensation coverage.

(4) Include occupational disease coverage.

(5) Include borrowed servant or alternate employer endorsement naming the NOLA TERMINAL Indemnitees as the alternate employer and stating that an action brought against

any member of the NOLA TERMINAL Indemnitees under the theory of “statutory employer”, “borrowed servant” or “alternate employer” or any similar theory will be treated as a claim against agent/ship vendor.

(6) Include maritime employers liability endorsement, including transportation, wages, maintenance and cure where applicable.

(b) Comprehensive General Liability

(1) Minimum policy limit of USD \$2,000,000.00 per occurrence/aggregate.

(2) Include sudden and accidental pollution coverage.

(3) Include completed operations hazard coverage.

(4) Include broad form property damage coverage.

(5) Deletion of all watercraft exclusions.

(6) Blanket contractual liability coverage applicable to all liability, indemnity and hold harmless provisions assumed under these Rules.

(7) Include independent contractors coverage.

(c) Automobile

(1) Minimum policy limit of USD \$1,000,000.00 combined single limit per occurrence or accident.

(2) Covering all owned, non-owned, hired and/or rented automotive equipment for bodily injury and/or property damage.

(d) Protection & Indemnity and Pollution (as applicable)

(1) Primary protection and indemnity insurance, including contractual liability, collision/tower’s liability and pollution buy-back endorsement subject to the terms and conditions of not less than the P&I SP-23 (Revised 1/56) form of policy or its equivalent with limit of \$5,000,000.00 applicable to any one accident or occurrence.

(2) Pollution insurance subject to an amount not less than \$5,000,000.00 and conditions available through the Water Quality Insurance Syndicate or equivalent for OPA, CERCLA and other substances coverages.

(e) Excess Liability Coverage

(1) Excess liability insurance following form with the underlying coverages providing limits of liability of no less than USD \$10,000,000.00 per occurrence over coverages and limits provided under Section 4(a) and Section 4(d) above.

NOLA TERMINAL Indemnitees shall be named as an additional insured, with the exception of workers’ compensation and employer’s liability, and with waivers of subrogation in each of the foregoing policies. Each of the foregoing policies shall contain a requirement that the Terminal will receive thirty (30) days’ notice of material change or cancellation, and all such policies shall be endorsed as primary to any

coverage carried by any member of the NOLA TERMINAL Indemniteses with each NOLA TERMINAL Indemnitee’s insurance being non-contributory. Sufficient evidence of coverage shall be furnished to the Terminal prior to the commencement of work or operations hereunder. A current Certificate of Insurance evidencing the above coverage must be on file at the Terminal office.

5. FORCE MAJEURE

Neither party shall be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by a Force Majeure event. The term “Force Majeure” as used herein will mean any event, wherever occurring, that is not reasonably within the control of the party claiming Force Majeure and which by the exercise of due diligence, the affected party is unable, wholly or in part, to prevent or overcome, including without limitation, acts of God; unusual weather conditions; tsunamis; strikes, lockouts, or boycotts of regional or national origin not directed solely at the parties; nationwide material or labor shortages; transportation accidents; restrictions imposed by any governmental authority; terroristic threat or act; and civil riot. The party claiming Force Majeure will give prompt written notice to the other of any such event or circumstance, and each party will cooperate in good faith with the other to mitigate the impact of any such event or occurrence and do all things commercially reasonable under the circumstances to achieve such goal.

6. DEFINITIONS

“Barge Carrier”	An operator of an inland river towing vessel which delivers River Barges to and/or from the Terminal
“Barge Unloading Schedule”	As defined in Section 3.1 of the Rules
“Berth”	The Terminal’s docks and mid-stream transfer facilities including the Terminal’s mooring buoys
“Berth Application”	As defined in Section 2.1(b) of the Rules; and Exhibit B
“Conditionally Accept”	As defined in Section 3.3 of the Rules
“Holidays”	As defined in Section 1.6 of the Rules
“Joint Inspection”	As defined in Section 3.2 of the Rules
“Notice of Readiness”	As defined in Section 2.2 of the Rules
“Ocean Vessel”	Bulk cargo ocean vessels or ocean-going barges of a type customarily engaged in the carriage of cargo
“River Barge”	Inland river hopper barges
“Rules”	These Terminal Rules and Regulations
“Shipper”	Any person or legal entity who engages NOLA TERMINAL to transfer cargo utilizing the Terminal

“Terminal”	As defined in Section 1.1 of the Rules
“NOLA TERMINAL”	NOLA Terminal LLC
“NOLA TERMINAL Indemnatee”	As defined in Section 1.7 of the Rules
“Users”	As defined in Section 1.3 of the Rules
“Vessel Nomination Form”	As defined in Section 2.1(a) of the Rules; and Exhibit A
“Visitor List”	As defined in Section 2.3 of the Rules