



**BURNSIDE TERMINAL**

**RULES AND REGULATIONS**

**IMPALA WAREHOUSING (US) LLC**  
**4258 HWY 44 DARROW, LOUISIANA 70725**

## **SECTION 1. TERMINAL REGULATIONS**

### **1.1. General**

#### **1.1.1 Use of Terminal**

Use of the Terminal facilities and services covered by these Terminal Rules and Regulations constitutes evidence of an agreement on the part of a User of the Terminal to be covered and bound by all the rules and regulations stated herein. Notwithstanding anything to the contrary herein, the rights of any User to utilize the Terminal facilities shall be subject to the prior approval of Terminal Operator.

#### **1.1.2 Hours of Operation**

The Terminal operates twenty-four (24) hours a day, every day throughout the year, excluding Holidays.

#### **1.1.3 Safe Berth**

The master of an Ocean Vessel and the captain/pilot of any tug/towboat attending a barge, as applicable, shall be solely responsible for determining if the depth of water (at any tide or river stage) at the Berth or Buoys, as applicable, is sufficient for the Vessel, with Terminal Operator having no responsibility therefor. Terminal Operator shall not be deemed to warrant the safety of public channels, fair ways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where any Vessel may operate. Furthermore, Terminal Operator shall not be deemed to warrant the safety of any of the Terminal facilities, including the Berth and Buoys.

#### **1.1.4 Remedies for Enforcement of Terminal Rules and Regulations**

Terminal Operator shall have all remedies available to it by law, in equity or in admiralty to enforce these Terminal Rules and Regulations, including, but not limited to, suspending Terminal operations and/or the provision of services hereunder. Terminal Operator shall also have all remedies available at law, in equity or in admiralty to collect all fees, charges, and/or damages due hereunder, including, but not limited to liens against the Vessel and/or Cargo for such fees, charges, and/or damages. In the event of any legal proceedings to enforce any provision of these Terminal Rules and Regulations, Terminal Operator shall be entitled to recover its expenses incurred in such proceedings, including attorneys' fees and all costs in any trial court and on any appeal.

All fees and charges hereunder must be paid in advance to the Terminal based on the estimated fees prior to a Vessel's berthing unless otherwise mutually agreed between Terminal Operator and the Vessel Party.

#### **1.1.5 Amendments / Interpretation**

Amendments to these Terminal Rules and Regulations may be issued from time to time. These Terminal Rules and Regulations are subject to change without notice. Terminal Operator shall be the sole judge as to the interpretation of these Terminal Rules and Regulations.

#### **1.1.6 Entirety of Agreement**

The Terminal Rules and Regulations shall control over any written agreement between Terminal Operator and any of its customers (each a "Customer Contract"), except that to the extent the Terminal Rules and Regulations conflict with any provision of such Customer Contract, the conflicting provision of the Customer Contract shall control. In case any provision (or portion thereof) contained in these Terminal Rules and Regulations should be held or determined invalid, illegal, in conflict with a Customer Contract or unenforceable in any respect, 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.

### **1.2. Terminal Safety and Security**

#### **1.2.1 Safety and Security**

All Vessels are to furnish, at all times while in the Berth or at the Buoys, safe means for persons to board and disembark from the Vessel. When a Vessel is at or alongside any of the Terminal facilities, the relevant Vessel Party shall be solely responsible for the safety of the Vessel and her crew. Any Vessel in Berth or at the Buoys shall at all times maintain appropriate officers and crew aboard the Vessel in order to maintain an alert watch and respond to emergencies. The Vessel's officers and crew shall at all times be responsible for monitoring the Vessel moorings and lines, and shall make adjustments to the moorings and lines during loading and unloading operations as necessary, to ensure the Vessel is secure.

#### **1.2.2 Access**

Terminal Operator reserves the right to deny access and/or use of the Terminal and/or to provide any services solely at Terminal Operator's discretion, including during changes in the applicable maritime security level, river conditions, or severe weather events.

### **1.3. Compliance and Vessel Party Responsibility**

#### **1.3.1 Compliance with Laws and Regulations**

Prior to coming into the Terminal, all Vessels shall have fully complied with all applicable U.S. Coast Guard regulations and all applicable local, state and federal laws and regulations in effect while the Vessel is at the Terminal. In no event shall loading or unloading of an Ocean Vessel, as the case may be, occur until such time as such Ocean Vessel has been cleared by U.S. Customs. If any Vessel fails to comply with all such laws and regulations, Terminal Operator may order the Vessel to vacate the Berth or Buoys (as applicable). If the Vessel does not vacate the Berth or Buoys (as applicable) when so ordered, the Vessel will be subject to, in addition to the liquidated damages set forth under Section 5.8, all costs and

expenses, including, but not limited to, attorneys' fees, in connection with the moving of the Vessel, which costs, expenses and liquidated damages shall be for the account of and the full risk of the Vessel and the Vessel Party.

### **1.3.2 Vessel Party Responsibility**

Terminal Operator shall not be responsible for any loss or damage to Cargo and/or Vessels calling upon and/or utilizing the Terminal facilities. Terminal Operator will receive, load, unload, transfer, handle or deliver Cargo in accordance with the Terminal Rules and Regulations.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN PROVIDING SERVICES UNDER THESE TERMINAL RULES AND REGULATIONS AND SUBJECT TO ANY LIMITATIONS AGREED BY THE PARTIES IN A SEPARATE LEGALLY BINDING AGREEMENT, TERMINAL OPERATOR SHALL NOT BE RESPONSIBLE FOR ANY DEMURRAGE OR OTHER DAMAGES FOR ANY LOSS OF TIME, DELAY, DEMURRAGE, OR ANY OTHER DAMAGES INCURRED BY ANY VESSEL OR ANY VESSEL PARTY AND/OR THE CARGO, EXCEPT (I) TO THE EXTENT DUE TO TERMINAL OPERATOR'S GROSS NEGLIGENCE, (II) TO THE EXTENT DUE TO TERMINAL OPERATOR'S FAILURE TO ACHIEVE THE LOADING RATES IN SECTION 2 WHILE THE APPLICABLE VESSEL IS ON LAYTIME, OR (III) AS SET FORTH IN SECTION 5.7.**

The Vessel Party shall have the duty to be fully familiar with the environmental rules, regulations and laws in respect to the type and levels of all discharges allowed in United States rivers, coastal waters and air and for fully abiding by said rules, regulations and laws. Terminal Operator will report any observed act by a Vessel Party which is suspected to be a violation of any such obligation, rule, regulation or law to the appropriate governmental authority.

All Vessels and Users of the Terminal hereby agree to **RELEASE, PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS** Terminal Operator and all persons, firms or other entities which may manage, own or control the operations of said Terminal, and its and their respective officers, directors, employees, agents, insurers, contractors and Vessels (the "Terminal Operator Indemnitees") from and against any and all claims, actions, demands, damages, liabilities or expenses, including court costs and attorneys' fees, in connection with the loss of life, bodily injury, disease, or any other injury of any type whatsoever, involving any person, including Visitors, and damage, contamination or loss of property, including the User's Cargo, incident to or resulting from their use of the Terminal facilities, and regardless of how caused (**EVEN IF CAUSED BY THE NEGLIGENCE OF ANY TERMINAL OPERATOR INDEMNITEE EXCEPT TO THE EXTENT CAUSED BY THE PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY TERMINAL OPERATOR INDEMNITEE**).

Additionally, such obligation of Vessels and Users to **RELEASE, PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS** the Terminal Operator 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 or threatened 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 pollutant of or from 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 the Vessel Party is responsible **EXCEPT TO THE EXTENT CAUSED BY THE PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY TERMINAL OPERATOR INDEMNITEE.** In the event of an actual or threatened pollution event arising directly or indirectly out of services being performed at the Terminal, the Vessel Party shall, and shall cause its representatives and insurers to, immediately:

- (i) Notify all local, state and federal authorities having jurisdiction of the pollution event.
- (ii) Notify Terminal Operator of all details of the pollution event and provide Terminal Operator with an MSD S of all hazardous and/or non-hazardous materials that Terminal employees or third parties may be exposed to.
- (iii) Take all steps to eliminate the cause and/or source of the pollution.
- (iv) Take all steps to clean up the pollution.
- (v) Take all steps required by law to restore the environment.
- (vi) Take all steps to mitigate damages of the Vessel Party, Terminal Operator and third parties.
- (vii) Promptly pay all fines and penalties, and damages and losses of third parties, to the extent required by law, and for all costs and expenses of clean up.
- (viii) If necessary, advance or pay monies and funds required to be paid to the appropriate regulatory agencies.
- (ix) Consult with Terminal Operator and keep Terminal Operator regularly informed of all steps taken and contemplated to comply with the provisions of this paragraph.
- (x) Cooperate with Terminal Operator in issuing statements to government authorities and media representatives.

Whether or not the Vessel Party has complied with the provisions of the foregoing, Terminal Operator may, but shall not be required to, take over and manage all prevention, clean-up and restoration activities, all without derogation or diminution of the Vessel Party's obligations under these Terminal Rules and Regulations, and with full reservation to Terminal Operator of all rights against the Vessel, the Vessel Party or its insurers for reimbursement of costs, expenses and attorneys' fees. In such event, the Vessel Party shall, and shall cause its insurers and any subcontractors to, make available to Terminal Operator all Vessels, personnel and equipment used or planned to be used in such prevention, clean-up and restoration efforts, all at the sole expense of the Vessel Party.

In the event Terminal Operator takes over and manages such prevention, clean-up and restoration efforts, such action shall not be deemed a waiver, or constitute an estoppel by Terminal Operator or an admission of any fault or responsibility on the part of Terminal Operator. Terminal Operator may, but is not required to, utilize its own and contracted personnel, Vessels and equipment in such prevention, clean-up and restoration efforts, and may at its discretion, allocate such resources as it, in its sole discretion, deems appropriate.

### **1.3.3 Insurance.**

- (i) Vessel Party shall maintain, or cause the relevant Vessel to maintain, the following types of insurance coverages:
  - a) Hull and Machinery Insurance on each Vessel, in an amount not less than the fair market value of the Vessel, with navigation limits adequate for the Vessel's trade; and
  - b) Protection and Indemnity ("P&I") Insurance provided through any combination of (i) full entry with a P&I Club (that is a member of the International Group of P&I Clubs); and/or (ii) policy(ies) with a commercial insurance company(ies) or underwriters syndicate(s) acceptable to Terminal Operator with terms no less broad than those customarily carried by similar marine carriers. Such P&I insurance shall include coverage for injury to or death of master, mates, and crew; tower's liability; excess collision liability; cargo legal liability; pollution liability; and contractual liability.
- (ii) Vessel Party will provide Terminal Operator, upon request, with a copy of relevant certificate(s) of insurance evidencing the insurance coverages required hereunder. Acceptance of any such certificate shall not constitute a waiver, release or modification of any of the required insurance coverages and endorsements if the certificate is inconsistent with those coverages and endorsements. The insurance coverages required under these Terminal Rules and Regulations shall all be endorsed to (i) contain waivers of subrogation rights against Terminal Operator Parties, (ii) name Terminal Operator Indemnitees as additional insureds; and (iii) provide that the insurance is primary coverage with respect to all insureds and shall not be considered contributory insurance with any insurance policies of Terminal Operator Indemnitees.
- (iii) The insurance requirements set forth herein shall not in any way limit any Vessel Party's or Vessel's legal and/or contractual obligations and liabilities under or in connection with the Agreement or these Terminal Rules and Regulations. The insurance coverages required hereunder will be maintained by each primary named insured at its sole cost and expense at all times during the term of the Agreement. If liability for loss or damage is denied by the insurer(s) of a Vessel Party and/or the Vessel, in whole or in part, because of the (i) breach of any policy for the insurance coverages required hereunder, or (ii) failure to obtain or maintain any of the insurance coverages required hereunder, VESSEL SHALL

HOLD HARMLESS AND INDEMNIFY TERMINAL OPERATOR PARTIES AGAINST ALL LOSSES.

**1.4. Terminal Services**

Services to be provided by Terminal Operator, subject to the terms and conditions of the Terminal Rules and Regulations and upon the request of a User, are as set forth on Schedule 1 (Terminal Services and Rates), attached hereto. Terminal Operator shall provide such services in a safe and prudent manner.

**1.5. Additional Services and Invoicing**

**1.5.1 Invoicing**

Terminal Operator shall render invoices according to Schedule 1 for services provided hereunder and the User agrees to pay said invoices within thirty (30) days from date of invoice. The invoice shall also contain reconciliation for any fees or charges which were secured with a pre-paid, estimated amount. Any invoice that remains unpaid after thirty (30) days from date of invoice shall earn interest, compounded at one and one-half percent (1-1/2%) interest 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 percent (1-1/2%) interest per month violates Louisiana law. Any pending or alleged claims against Terminal Operator will not be allowed as an offset against outstanding or accrued charges until such claims have been agreed to by Terminal Operator in writing or legally established by court order.

**1.5.2 Bunkers**

No bunkers, diesel fuel or oils may be received or taken aboard by Vessels in Berth or at the Buoys.

**1.5.3 Repairs**

Once the NOR has been tendered, no repairs that would impede the movement of the Vessel or that would interfere with Cargo transfer operations or otherwise affect safety at the Terminal shall be undertaken by the Vessel or a Vessel Party.

**1.5.4 Visitors and Delivery of Vessel Provisions**

Terminal Operator reserves the right to deny access to any Visitor whom Terminal Operator, in its sole discretion, deems may result in injury, damage or loss to persons or property at the Terminal. Every person entering the Terminal facilities must sign in with the Terminal office before proceeding to any Vessel or Terminal facility and shall furnish Terminal Operator with identification acceptable to Terminal Operator. Any person or vehicle that enters the Terminal facilities shall be subject to a search conducted in accordance with Terminal Operator's Facilities Security Plan. Such Visitors, subject to the prior approval of Terminal Operator, may arrange for outside transportation for pickup and delivery at the Terminal. Approved Visitors may gain access to Vessels berthed at the Berth or at the Buoys via Terminal Operator's crew

boat service, which service shall be provided at the sole expense and for the account of the Vessel or the Vessel Party as set forth in Schedule 1 under "Access Fee." Such access, however, shall require that the Visitor furnish twenty-four (24) hours prior written notification to the Terminal office of same. All Visitors must wear protective equipment, steel-toed boots, hard hats, safety glasses and life jackets. Delivery of provisions or stores to any Vessels berthed at the Terminal shall require the prior approval of Terminal Operator subject to a determination by Terminal Operator 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 Terminal Operator as a condition to being allowed access to the Terminal facilities, including, but not limited to, a Terminal Access Agreement, a form of which is attached hereto as Schedule 3.

### **1.5.5 Special Contracts**

Charges for services or items not specifically provided for in these Terminal Rules and Regulations shall be assessed pursuant to a separate written contract with Terminal Operator.

### **1.5.6 Liens**

All charges made by or due to Terminal Operator shall constitute a lien in favor of Terminal Operator upon the Cargo and against any Vessel for such charges to the fullest extent permitted by law.

Terminal Operator shall have the right to retain possession of and/or relocate a Vessel and its belongings within Terminal property if necessary to preserve and maintain its lien rights for any amounts due hereunder to Terminal Operator. Terminal Operator shall have no liability to the Vessel Party by retaining and/or relocating Vessel and its belongings at the Terminal.

## **1.6. Private Terminal**

Notwithstanding anything to the contrary herein, the facility is a private terminal facility and Terminal Operator is not a marine terminal operator as defined by the Shipping Act of 1984, as amended. Common carriers by water (such as liners), as defined by the Shipping Act of 1984, as amended, will not be accepted for loading or unloading at the facility. Only Vessels engaged in private or contract carriage pursuant to private commercial arrangements will be accepted by Terminal Operator for berthing at the facility.

## **SECTION 2. TERMINAL SPECIFICATIONS**

### **2.1. Terminal Location**

The Terminal is located at Darrow, Louisiana, on the West Descending Bank of the Mississippi River. The Buoys are located at mile marker LMR 169.2. The Berth is located just south of the Terminal, at mile marker LMR 169.5.

### **2.2. Midstream Operations**



Buoy Description

5 buoys with a capacity of 150 metric tons each  
The upstream buoy is located at a distance of approximately 1,235 feet from the downstream buoy.

Buoy Limitations

Maximum Length Overall: 230 meters / 755 feet  
Maximum Beam: 32.2 meters / 105.6 feet  
Maximum Displacement: 85,600 metric tons  
Maximum Aircraft: 17 meters / 56 feet  
Loading Rate (per Weather Working Day): 20,000 metric tons

**2.3. Terminal Operations**

Berth Description

Length of Berth: 335 meters / 1,100 contiguous feet  
Length of Dock: 267 meters / 875 feet  
Water Depth at Dock: 14 meters / 46 feet low water draft  
Spout Reach from face of Dock: 40 meters / 131 feet  
Loading Rate (per Weather Working Day): 25,000 metric tons

Ocean Vessel Limitations

Maximum Length Overall: 270 meters / 886 feet  
Maximum Beam: 43 meters / 141 feet  
Maximum Displacement: 169,500 metric tons (when fully loaded)  
Maximum Aircraft: 18.6 meters / 61 feet

Barge Unloading Limitations/Requirements

Maximum Width: 10.7 meters / 35 feet  
Maximum Length: 62.5 meters / 205 feet

**Note:** All descriptions and dimensions provided within this Section 2 are approximate, and Terminal Operator makes **no warranty or guarantee of the accuracy of this information**; provided, however, Terminal Operator guarantees the loading rates in Section 2.2 and 2.3 subject to the other terms hereof and any separate agreement between Vessel Party and Terminal Operator. The loading rate guarantees in Section 2.2 and Section 2.3 will be adjusted if the Ocean Vessel has ship gear or other features that impede the normal loading capabilities of the Terminal Operator.

Guaranteed loading rates do not apply on Holidays.

## **SECTION 3. VESSEL NOMINATIONS**

### **3.1. Nomination and Filing**

#### **3.1.1 Nomination.**

Ocean Vessel nominations shall be furnished to Terminal Operator by confirmed receipt e-mail to [BurnsideShips@Impala-wl.com](mailto:BurnsideShips@Impala-wl.com) not earlier than thirty (30) days and not later than fifteen (15) days prior to the Ocean Vessel's projected ETA at the Terminal. Such nomination shall include the Ocean Vessel IMO number, tonnage, loading drafts, name of carrier, and type of Cargo carried or to be carried. Acceptance by Terminal Operator of a nomination of a Vessel or scheduling of river barges shall be evidenced by Terminal Operator's confirmation by e-mail transmittal to the relevant Vessel Party, and Terminal Operator must respond to such nomination with twenty four (24) hours.

#### **Ocean Vessel (> 60,000 metric tons):**

- (i) Vessel Party shall request from Terminal Operator, in writing, a 10-day Layday Period at least thirty (30) days prior to the date of the first day of the Layday Period. Terminal Operator shall advise Vessel Party in writing within twenty four (24) hours whether or not the proposed Layday Period is acceptable. If the proposed Layday Period is not acceptable, Terminal Operator shall offer Vessel Party an alternative Layday Period for Vessel Party's consideration.
- (ii) No later than fifteen (15) days from the date of the first day of the agreed-upon Layday Period, Vessel Party shall identify in writing to Terminal Operator a five (5) day Laycan within such original Layday Period. In each case mentioned above, the written approval of Terminal Operator shall be required relative to the 10-day Layday Period and the 5-day Laycan.

#### **Ocean Vessel (< 60,000 metric tons):**

- (iii) Vessel Party shall request from Terminal Operator, in writing, a 7-day Layday Period at least thirty (30) days prior to the date of the first day of the Layday Period. Terminal Operator shall advise Vessel Party in writing within twenty four (24) hours whether or not the proposed Layday Period is acceptable. If the proposed Layday Period is not acceptable, Terminal Operator shall offer Vessel Party an alternative Layday Period for Vessel Party's consideration.
- (iv) No later than fifteen (15) days from the date of the first day of the agreed-upon Layday Period, Vessel Party shall identify in writing to Terminal Operator a four (4) day Laycan within such original Layday Period. In each case mentioned above, the written approval of Terminal Operator shall be required relative to the 7-day Layday Period and the 4-day Laycan.

**River Barges:** With respect to river barges, the Vessel Party shall provide the following information not later than seven (7) days prior to the projected ETA of the river barges at the

Terminal, listing with respect to each such river barge the individual barge numbers, tonnage, loading drafts, name of carrier, projected ETA, a designation of whether the Cargo is to be delivered to the storage pad or held for direct transfer to Ocean Vessel, 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 at the relevant fleet. All Users and their river barges utilizing the facilities and services of the Terminal Operator shall be subject to and shall abide by the terms and conditions of the Terminal Rules and Regulations.

### **3.1.2 Filing.**

All Ocean Vessels and Vessel Parties which intend to utilize the facilities and services of Terminal Operator shall file with Terminal Operator by confirmed receipt e-mail to [BurnsideShips@Impala-wl.com](mailto:BurnsideShips@Impala-wl.com) a Berth Application stating the projected ETA of the Vessel. The Berth Application must be received by Terminal Operator no later than fifteen (15) days prior to the projected ETA of the Ocean Vessel. An executed original of the Berth Application must follow by U.S. Mail to the following address:

Attn: Terminal Manager  
Impala Warehousing (US) LLC  
4258 Highway 44  
Darrow, Louisiana 70725

Acceptance by Terminal Operator of a Berth Application shall be evidenced by Terminal Operator's issuance to the Vessel Party of a Berth Application acceptance notice ("Acceptance Notice") confirming the projected ETA as the scheduled ETA. The Vessel shall send to Terminal Operator by e-mail updated ETAs as follows: ten (10) days, five (5) days, forty-eight (48) hours, twenty-four (24) hours, twelve (12) hours, and six (6) hours prior to arrival.

Subject to Section 5.7, Terminal Operator will endeavor to berth Ocean Vessels in order of nomination acceptance, subject to (i) timely receipt of ETA updates, (ii) arrival within the agreed-upon Laycan, and (iii) compliance with the other terms hereof.

### **3.1.3 Certification for Filing**

In the case of an Ocean Vessel, the following certificates and documents must be presented to Terminal Operator to file for a berth at the Terminal:

- (i) An original Berth Application signed by the authorized Vessel Party.
- (ii) A copy of the NOR executed by the authorized Vessel Party.
- (iii) A customary hold cleanliness certificate.
- (iv) International tonnage certificate.

- (v) A proposed stowage plan which includes Cargo cubic capacity for any Ocean Vessel to be loaded and the loading sequence or the actual plan for Cargo to be unloaded including the unloading sequence.
- (vi) Additionally, should it be necessary for Vessel personnel to leave the Vessel or Visitors, including Vessel's agent, to board the Vessel, twenty-four (24) hours prior written notification to Terminal Operator must be provided and include a list of the: (a) name, (b) address, (c) telephone number and (d) reason for visit of each Visitor to the Vessel and Vessel personnel leaving the Vessel (the "Visitor List"). Each Visitor must have a form of identification acceptable to Terminal Operator. The Visitor List shall be supplemented as needed and furnished in advance of the visit to the Terminal Operator in writing between 7:30 a.m. and 4:00 p.m. Mondays through Fridays, excluding Holidays. Any Vessel personnel leaving the ship shall be required to furnish Terminal Operator with a Crewman's Landing Permit — Form 1-95 issued by the U.S. Immigration & Naturalization Service and a picture identification card.
- (vii) Any special loading or unloading instructions, including instructions regarding the specific location of structural or other protruding objects in the Vessel's cargo hold(s) that could be damaged during loading or unloading.

#### **3.1.4 Notice of Readiness**

Once the Ocean Vessel to be loaded is (1) located at the Berth, the Buoys, or the closest available safe anchorage to Darro w, Louisiana, and (2) ready and suitable in all respects to commence loading, the master of the Ocean Vessel shall tender NOR whether cleared at customs or not, whether in free pratique or not, whether in port or not, and whether in berth or not. Terminal Operator shall not be required to accept NOR unless and until the NOR is tendered within the applicable Laycan.

#### **3.1.5 Laytime; Demurrage for Failing to Meet the Guaranteed Loading Rate; Despatch**

Laytime commences upon the earlier to occur of (i) 12 hours after the Ocean Vessel has properly tendered NOR and (ii) when a Vessel is secured All Fast and is ready to load in all respects, provided that time consumed for the following shall not count as Laytime (or time on demurrage):

- (i) time consumed by the Ocean Vessel in moving from port anchorage to the Berth, including waiting for tide, traffic, or daylight, and time consumed during draft surveys;
- (ii) if loading starts before the completion of the 12-hour period after NOR ("turn time"), then only actual time used shall count as Laytime until expiration of such turn time;

- (iii) any delay due to inability of the Ocean Vessel's facilities to safely discharge or receive Cargo for any reason;
- (iv) any time consumed in interruption of transportation operations due to the Vessel's failure to comply with terminal regulations (including, but not limited to, these Terminal Rules and Regulations);
- (v) delay due to prohibition of Cargo transfer at any time by the Vessel, the owner or operator of the Vessel, or by governmental authorities, unless such prohibition is caused by the Terminal Operator's failure to comply with applicable laws;
- (vi) delays due to awaiting customs and/or immigration clearance and pratique, if applicable;
- (vii) any delay caused by strike, lockout, stoppage or restraint of labor of the Master, officers and crew of the Vessel or pilots or any delay for which a Vessel Party, the Vessel, her Master or crew is responsible; or
- (viii) any delay caused by conditions not reasonably within Terminal Operator's control, including but not limited to, weather, equipment failure, awaiting tide, force majeure, blockage of channels caused by spills or accidents, etc.

Laytime ends when the Ocean Vessel has completed loading.

Subject to the foregoing, the amount of Laytime for a given Ocean Vessel equals the actual quantity of Cargo to be loaded onto the Ocean Vessel divided by the pro rata guaranteed load rate set forth in Section 2.3.

To the extent Terminal Operator exceeds the applicable amount of Laytime for an Ocean Vessel, Terminal Operator will reimburse Vessel Party for actual vessel demurrage incurred, invoiced, and paid in accordance with the demurrage rate as set forth in the charter party provided by Vessel Party to Terminal Operator prior to Ocean Vessel's arrival at the Terminal. Upon request from Terminal Operator, Vessel Party shall immediately supply Terminal Operator with a copy of the charter party. Notwithstanding the foregoing, the demurrage shall be reasonably in line with the daily hire rates for the Ocean Vessel at the time of entering the charter party. Vessel Party shall pay despatch compensation to Terminal Operator for time saved by exceeding the applicable guaranteed loading rate at an amount equal to fifty percent of the demurrage rate in the applicable charter party documents.

Notwithstanding anything to the contrary, Vessel Party waives any demurrage claim to which it may be entitled if Vessel Party does not provide notice to Terminal Operator on or before sixty (60) calendar days after the date on which the applicable Ocean Vessel completes loading.

### **3.1.6 Agreement to be Bound**

The issuance by Terminal Operator of the Acceptance Notice above or the berthing of any Vessel at the Terminal, shall constitute a contract by and among Terminal Operator, the

Vessel and any Vessel Party (jointly and severally) to abide by the provisions of, and to be liable for the charges of whatsoever kind or nature in these Terminal Rules and Regulations.

### **3.1.7 Closest Available Anchorage**

Ocean Vessels filing a Berth Application to utilize the Terminal facilities normally will be required to anchor at Burnside Anchorage (mile marker LMR 169.2–169.5), or the closest available anchorage to Darrow, Louisiana.

The Vessel Party acknowledges that any Vessel arriving at the Terminal with Cargo on its deck may constitute a hazardous and unsafe condition and may be in violation of certain environmental compliance, regulations and laws, which will render any NOR invalid. The Vessel Party agrees that if notified of such condition, it shall be the sole responsibility of the Vessel Party to clean and remove any such product which renders the deck of any such Vessel hazardous to the safety of any person. Should the Vessel Party fail to promptly clean and remove Cargo from the deck of any such Vessel, Terminal Operator shall have the right, but not the obligation, to clean and remove the Cargo from the Vessel's deck, which service will be solely for the account of the Vessel Party. Alternatively, Terminal Operator may reject the Vessel and refuse to accept it at the Terminal.

The Vessel Party shall coordinate and be solely responsible for all required inspections for cleanliness and compliance with all applicable laws and regulations relative to the fitness of the Vessel. All run off reporting and other environmental compliance and reporting shall be the Vessel Party's sole responsibility. Any EPA, regulatory, or court imposed fines and penalties levied against the Terminal Operator as a result of a Vessel Party's non-compliance and/or failure to report shall be for the Vessel Party's account.

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

In the event that the Ocean Vessel fails to proceed to the Terminal as required by the preceding paragraph, Terminal Operator may, in its sole discretion, and without liability to anyone, bypass the subject Ocean Vessel, and the Ocean Vessel and the Vessel Party shall be responsible for a dead berth charge of 115% of the then-current hourly dockage rate per hour (with partial hours prorated) as liquidated damages until the Ocean Vessel is moored at the Terminal, regardless of intervening circumstances of any nature, which charge shall be assessed as liquidated damages.

### **3.1.8 Refiling**

If any Ocean Vessel that has filed a Berth Application is ordered by Terminal Operator to proceed to the Terminal and is unable or refuses to accept such order, due to any reason whatsoever, or otherwise fails to comply with these Terminal Rules and Regulations, Terminal

Operator may, at its sole discretion, cancel the Ocean Vessel's original filing. If a filing is cancelled, the Ocean Vessel must refile a Berth Application and will be assigned a rotation in the Terminal berthing queue based upon the new filing time.

## **SECTION 4. CARGO OPERATIONS**

### **4.1. Vessel Loading and Unloading**

Terminal Operator requires the full cooperation of the master, crew and agents of all Vessels loading and unloading at the Terminal. This includes, but is not limited to the following:

- (i) The Vessel's master and chief mate are responsible for the proper loading and unloading of their Vessel.
- (ii) Shore scales are NOT accurate and should be used as a guide only. It is the responsibility of the Vessel's officers, and not Terminal personnel, to stop loading and unloading — not only when the desired draft has been reached but also prior to reaching the maximum quantity of Cargo.
- (iii) There are approximately 100 metric tons of Cargo on the belt, which must be loaded or unloaded before the belt can stop. Increments of less than 100 metric tons can only be approximated.
- (iv) Providing a loading or unloading plan prior to arrival but not later than boarding by Terminal personnel. Any change to the loading or unloading must be given in writing to Terminal personnel.
- (v) Providing Vessel particulars including LOA, beam, hatch configuration, dimensions, and spacing, cranes, as well as on deck obstructions and any structural or other protruding objects in the Vessel cargo hold (including any that may be covered by Cargo).
- (vi) Vessel pumping ballast and deballast as and when requested by Terminal Operator as well as stopping ballast removal at the request of Terminal Operator.
- (vii) Vessel arriving above the air draft specified by Terminal Operator.
- (viii) Vessel maintaining an all fast condition in the Berth or at the Buoys before, during, and after loading or unloading.
- (ix) Shifting the Vessel in the Berth or at the Buoys at the direction of Terminal Operator 24 hours per day if necessary in Terminal Operator's reasonable discretion.
- (x) During Vessel trimming, Terminal Operator shall not be required to load Cargo into more than two hatches after completion of the load plan unless the Vessel

pays Terminal Operator detention charges based on 15 minute intervals and 115% of the then-current hourly dockage rate.

- (xi) Relocate or rotate the Vessel's gear to clear the hatches and or loading/unloading system immediately upon request by Terminal Operator at any time while the Vessel is at the Berth or Buoys.
- (xii) Open or close hatches as and when requested by Terminal Operator, including prior to boarding by the Terminal personnel upon arrival and completion of berthing (i.e., when all fast in the Berth or at the Buoys).
- (xiii) Upon request by Terminal Operator, a suitable space shall be made available on board a Vessel for the Terminal's load master and/or loading personnel for use during weather delays and while calculating stowage or loading systems.
- (xiv) In the event of a loading or unloading system breakdown or berth system damage, the Vessel shall provide all necessary assistance to reduce damages and/or to assist Terminal Operator in resuming the loading or unloading activity.
- (xv) The loading or unloading of any Cargo via the Terminal's equipment shall constitute acceptance, in full, of all provisions in these Terminal Rules and Regulations. Failure of a Vessel Party to sign any forms or the modification of any forms by a Vessel Party shall not relieve such Vessel Party of its obligations under these Terminal Rules and Regulations.
- (xvi) Terminal Operator shall not be required to load beyond the applicable Mississippi Pilots Association guidelines/suggestions when weather/tide forecast indicate that loading to a deeper draft may substantially delay Vessel departure.

#### **4.2. Stowage**

The Vessel Party shall be solely responsible for the stowage of the Cargo. Cargo shall be stowed within the Vessel only in areas where grabs and equipment spouts can reach, subject to Vessel design capability. Dozer work shall be provided to the Vessel Party at an additional charge agreed upon by Terminal Operator and the Vessel Party prior to the Vessel coming into the Terminal. In any event, the loading sequence plan shall not exceed two (2) pass loadings and two (2) hold trims. Terminal Operator will allow each Vessel two (2) draft checks which are not to exceed a period of 30 minutes each. Any Vessel exceeding the allotted time for draft checks will also be assessed the detention fee of \$1,200 per hour (with partial hours prorated).

Any Vessel which is required to shift/warp within the Terminal will be responsible for any/all expenses pertaining to shifting/warping, including, but not limited to, line handling, pilot, and tug(s), unless ordered by Terminal Operator outside the course of normal operations.

#### **4.3. Suitability of Cargo**



Users acknowledge that Terminal Operator only provides transfer facilities at the Terminal. Terminal Operator reserves the right, without any responsibility for any loss, damage, or demurrage that may arise, to refuse any Cargo because in the sole discretion of Terminal Operator, such Cargo is unmerchantable or in an unfit condition for loading, unloading, transfer or handling.

#### **4.4. Handling of Cargo**

User hereby expressly acknowledges that varying temperatures, moisture and weight changes and spontaneous combustion constitute inherent problems associated with the handling of Cargo. Prior to loading or unloading, User's surveyor shall determine that the temperature, moisture and condition of the Cargo are satisfactory.

#### **4.5. Weather Conditions**

When, in Terminal Operator's opinion, weather conditions threaten the safety of any moored or fleeted Vessel and/or the structural integrity of the Terminal facilities, Terminal operations and/or services will be suspended and any Vessel moored or fleeted at the Berth or the Buoys shall vacate the Berth or Buoys immediately when requested by Terminal Operator to do so and until such time as weather conditions permit. If any Vessel does not leave the Berth or Buoys within three (3) hours of being ordered to do so, all costs (including but not limited to attorneys' fees) and expenses in connection with the moving of the Vessel and mooring or fleetings of same, as the case may be, shall be for the account of and at the full risk of the Vessel and the Vessel Party. In no event shall Terminal Operator have any responsibility for any Vessel, including, but not limited to, the cost of moving a Vessel that is ordered to vacate the Terminal for any reason provided in these Terminal Rules and Regulations, and the Vessel Party shall indemnify and hold Terminal Operator harmless from same. Any damage to the Terminal facilities or other equipment shall be the responsibility of the Vessel Party and Vessel, and the Vessel Party and Vessel, jointly and severally, shall indemnify and hold Terminal Operator harmless from any such damage. Any Vessel calling at the Terminal shall be subject to the written guidelines and procedures relative to hurricanes adopted by Terminal Operator, as such guidelines and procedures may be posted and updated from time to time on the Terminal's website.

### **SECTION 5. VESSEL OPERATIONS**

#### **5.1. Vessel to Remain all Fast in Berth**

It is the Vessel's responsibility to maintain the Vessel all fast in the Berth or at the Buoys at all times, Vessel is required to maintain lines taught at all times to prevent Vessel from moving in the Berth or at the Buoys. Terminal Operator reserves the right, in its reasonable discretion, to: (a) suspend loading or unloading, and/or (b) require Vessel to ballast or deballast to safe condition, and/or (c) order the Vessel to leave Berth or Buoy at Vessel's expense if lines are not kept tight. The Vessel will be held responsible for all delay costs resulting from not maintaining the Vessel all fast in the Berth or at the Buoys.

#### **5.2. Berthing and Safety Equipment**

Upon berthing, the Ocean Vessel shall immediately and at all times provide adequate lighting, equipment, and appropriate officers and crew aboard to permit loading or unloading, as the case may be, of Cargo at any time of the day or night, including Saturdays, Sundays and Holidays. All Ocean Vessel officers and crews shall wear life jackets, safety glasses, steel-toed boots, and hard hats while on the Terminal property.

### **5.3. Vessel to Safely Shift on its Own Lines**

If necessary, the Vessel shall safely shift on its own lines as required by Terminal Operator during loading or unloading.

### **5.4. Line Handling**

The master and crew of every Vessel will provide assistance in handling lines and operating deck machinery. An English-speaking deck officer must be available to ensure timely response to directions of any representatives of the Terminal relative to handling of lines. Terminal representatives will position lines in the Berth and at the Buoys. Line handling for docking and undocking of Ocean Vessels in the Berth and at the Buoys, shall be assessed at the rate provided in Schedule 1.

### **5.5. Use of Tugs**

When an Ocean Vessel is entering or leaving the Terminal, Terminal Operator shall provide a minimum of two (2) tugs at the sole expense of and for the account of the Vessel and the Vessel Party at the rates set forth in Schedule 1. If the master of the Ocean Vessel determines that weather or other conditions warrant the use of additional tugs, such additional tugs will be at the sole expense of and for the account of the Ocean Vessel and the Vessel Party, at the rates set forth in Schedule 1. A one (1) hour waiting period from the call-out time is allowed. Any additional time will be invoiced in accordance with the standby rate set forth in Schedule 1. Charges for tug and towage services will be assessed to the relevant Vessel Party by Terminal Operator.

### **5.6. Continuous Readiness**

Assignment of the Berth or Buoys under these Terminal Rules and Regulations is predicated upon Ocean Vessel's continuous readiness twenty-four (24) hours a day, seven (7) days a week to receive or unload Cargo at the Terminal's full normal rate, throughout the entire time in Berth or at the Buoys and compliance with the directions of Terminal Operator, including shifting within or between anchorage sites, the Berth or the Buoys. Any delay in loading or unloading by the Ocean Vessel or refusal to follow directions of Terminal Operator, including an order to vacate the Berth or Buoys, shall subject the Ocean Vessel and the Vessel Party to a charge of 115% of the then-current hourly dockage rate per hour (with partial hours prorated) which shall be assessed as liquidated damages regardless of any intervening circumstances of any nature.

### **5.7. Vessel Rotation**

Terminal Operator may alter the turn of Ocean Vessels for loading or unloading, when, in Terminal Operator's sole judgment, it is in the best interest of Terminal operations; provided, however, if Terminal Operator chooses to berth an Ocean Vessel in front of another Ocean Vessel that properly tendered NOR first (and such Ocean Vessel that first tendered NOR arrived within its Laycan and otherwise complied with the terms hereof, including, without limitation, Section 3), only in such instance will Terminal Operator be liable to such displaced Vessel Party for demurrage in accordance with the charter party disclosed to Terminal Operator.

#### **5.8. Vacating the Terminal**

Whenever an Ocean Vessel is unable or refuses to load or unload, or shift within or between anchorage sites, the Berth or the Buoys, Terminal Operator may order the Ocean Vessel to vacate the Terminal after notice to vacate is delivered to the Ocean Vessel's master or agent and such Ocean Vessel thereafter shall be deemed a spot Vessel. If an Ocean Vessel refuses or fails to vacate the Terminal when ordered to vacate, Terminal Operator shall be entitled to charge and recover from Ocean Vessel and the Vessel Party as liquidated damages 115% of the then-current hourly dockage rate per hour (with partial hours prorated) beginning one (1) hour after delivery of the notice to vacate and continuing as long as the Ocean Vessel remains in the Terminal, regardless of any intervening circumstances of any nature.

Furthermore, Terminal Operator reserves the right to order, at its sole discretion, any Ocean Vessel to vacate the Terminal, should the Ocean Vessel fail to vacate the Terminal when so ordered, a charge of 115% of the then-current hourly dockage rate per hour (with partial hours prorated) shall be assessed against the Ocean Vessel and the Vessel Party as liquidated damages until the Ocean Vessel vacates the Terminal, regardless of any intervening circumstances of any nature. If the Ocean Vessel does not vacate the Terminal when so ordered, the Ocean Vessel will be subject to, in addition to the liquidated damages above, all costs, including but not limited to, attorney fees and expenses in connection with the moving of the Ocean Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Ocean Vessel and the Vessel Party.

#### **5.9. Vacating Berth Upon Completion of Loading/Unloading**

All Ocean Vessels shall vacate the Terminal within one (1) hour of completion of loading or unloading. If an Ocean Vessel refuses or fails to vacate the Terminal when ordered to vacate, Terminal Operator shall be entitled to charge and recover as liquidated damages from the Ocean Vessel and the Vessel Party, 115% of the then-current hourly dockage rate per hour (with partial hours prorated) beginning one (1) hour after receipt of the notice to vacate and continuing until vacation of the Terminal occurs regardless of any intervening circumstances of any nature. If the Ocean Vessel does not timely vacate the Terminal, the Ocean Vessel will be subject to, in addition to the liquidated damages above, all costs and expenses, including but not limited to attorneys' fees, in connection with the moving of the Ocean Vessel, which costs and expenses (and liquidated damages) shall be for the account of and the full risk of the Ocean Vessel and the Vessel Party.

#### **5.10. Nuisance Created By Vessels**

No Vessel shall permit excessive smoke, steam, noise or cleaning of boiler tubes by blowing or other means while at the Terminal.

#### **5.11. Vessel Suitability**

Terminal Operator reserves the right to refuse any Vessel considered unseaworthy due to damage, distribution of load, draft or lack of freeboard, lists or such other reason for which Terminal Operator deems the Vessel not suitable for calling upon or conducting operations at the Terminal. The Vessel Party, at all times, shall remain responsible for the seaworthy condition of its Vessel. The berthing of any Ocean Vessel or delivery of any river barge to the Terminal shall constitute a warranty by the Vessel Party to Terminal Operator that there are no defects in the Vessel and that same is capable of either being loaded with the Cargo to be loaded by Terminal Operator or to be unloaded by Terminal Operator using the equipment normally employed by Terminal Operator. In no event shall Terminal Operator be responsible for the seaworthiness, maintenance, repair or service of any Vessels coming into the Terminal or delivered to the Terminal, such responsibility being that of the Vessel Party. Notwithstanding the foregoing, should any Vessel develop any leaks, cracks or other conditions which, in the sole judgment of Terminal Operator, may result in damage to the Vessel and/or its Cargo, the Vessel Party agrees to take whatever steps are necessary to protect the Vessel and/or its Cargo.

### **SECTION 6. DEFINITIONS**

“**Acceptance Notice**” has the meaning given that term in Section 3.1.2.

“**All Fast**” means that such Ocean Vessel is safely secured to the Berth (or the Buoys) and that the gangway is down and secured.

“**Berth**” means Terminal’s fixed dock and wharf structure located at mile marker LMR 169.5.

“**Berth Application**” means that certain Impala Warehousing (US) LLC Berth Application, a form of which is attached hereto as Schedule 2, as such application is distributed by Terminal Operator, posted on its website and updated from time to time.

“**Buoy(s)**” means Terminal’s midstream mooring buoy system located at mile marker LMR 169.2.

“**Cargo**” means coal and other dry bulk cargo as approved by Terminal Operator.

“**Customer Contract**” has the meaning given that term in Section 1.1.6.

“**Day**” means a consecutive 24-hour period or fraction thereof.

“**Deadweight**” means the difference between a ship’s loaded and light displacement, consisting of the total weight of cargo, fuel, fresh water, stores, and the crew.

“**Dockage**” means the charge assessed against a Vessel for berthing at the Terminal and as set forth in Schedule 1.

“**Estimated Time of Arrival (ETA)**” means the Vessel-issued information regarding estimated arrival date and time at the specific location off the Terminal at which Vessel will customarily be required to tender NOR.

“**Holidays**” means Christmas Day (6:40 P.M. CPT December 24th through 6:40 A.M. December 26th) and New Year’s Day (6:40 P.M. CPT December 31st through 6:40 A.M. January 2). All guarantees are exclusive of Holidays.

“**Laycan**” means that certain period within the Layday Period and the earliest date at which loading (Laytime) can commence and the latest date upon which the Vessel can arrive at its appointed loading place without being at risk of being canceled.

“**Layday Period**” means the agreed-upon period during which Vessel Party will make the Vessel available for loading.

“**Laytime**” means the period of time during which Terminal Operator must load the Vessel at the loading rates set forth herein subject to all other terms herein.

“**Notice of Readiness or NOR**” means the document to be tendered by the Vessel master or the Vessel agent to the Terminal indicating readiness for proceeding to the Terminal (according to the terms hereof, including, without limitation, Section 3.1.4) following arrival of such Vessel at the specific location off the Terminal at which Vessel will be customarily required to wait for pilots or prior to proceeding to the Terminal.

“**Ocean Vessel**” means any single-deck, ocean-going Vessel, other than a river barge, that utilizes the services and facilities of the Terminal for the loading, unloading, handling or transfer of Cargo.

“**Terminal**” means the bulk loading terminal known as the “Burnside Terminal” located at 4258 Hwy 44, Darrow, Louisiana, 70725 owned by Terminal Operator, which includes the Berth and the Buoys with the characteristics listed in Section 2 and is capable of safely accommodating Vessels for loading or unloading.

“**Terminal Operator Indemnitees**” has the meaning given that term in Section 1.3.2.

“**Terminal Operator**” means Impala Warehousing (US) LLC.

“**User or Users**” shall include the 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 the Terminal.

“**Vessel**” includes within its meaning every description of water craft or other artificial contrivance whether self-propelled or non-self-propelled, capable of being loaded or unloaded at

the Terminal and used as a means of transportation on water and shall include in its meaning the owner thereof and the agent acting on its behalf. The term "Vessel" or "Vessels" shall include any river barge, ocean-going barge, or Ocean Vessel.

**"Vessel Party"** means any party or parties owning, nominating or contracting with a Vessel, including, but not limited to, her agent(s), owner(s), operator(s), charterer(s), and any of her or their respective employees and contractors.

**"Visitor List"** has the meaning given that term in Section 3.1.3.

**"Visitor(s)"** means any individual or entity listed in the Visitor List and any other individual or entity that seeks access to the Terminal facilities or any Vessel berthed there, including, but not limited to, any surveyor.

**"Weather Working Day"** means any period of 24 consecutive hours during which weather permits shiploading operations, as determined in Terminal Operator's sole but reasonable discretion.

**Schedule 1. TERMINAL SERVICES AND RATES**

**Current rates are set forth on Appendix I hereto. Such rates are subject to change at the discretion of Terminal Operator. Lack of notice by Terminal Operator or lack of acknowledgment by the Vessel will not relieve the Vessel of its obligation to pay the changed fees:**

**A. DOCKAGE (at the Berth or the Buoys)**

Dockage shall be assessed against each Vessel (excluding river barges) per Gross Registered Ton (GRT) per 24 hour period, not prorated. The dockage day shall commence upon the Vessel's first line at the Berth or the Buoys and shall be considered complete at the time the last line is removed from the Berth or the Buoys. The GRT shall be based on the Vessel's highest GRT as per Lloyd's Register of Shipping. Terminal's fuel surcharge shall not apply towards dockage charges.

**B. TOWAGE SERVICES**

Towage shall be assessed to each Vessel per tug for Vessels mooring or unmooring at the Berth, per tug for Vessels mooring or unmooring at the Buoys and an additional per-hour charge per tug for Vessels requiring warping assistance alongside the Berth. Hold in tugs (if required by the Vessel) shall be assessed a per-hour rate per tug, and Terminal Operator will assess a per-hour rate per tug for any tug delays or tug standby time which may be incurred. While these towage service rates do include customary GRT charges, they do not include and are subject to Terminal's fuel surcharge. Vessel agent shall make arrangements for timely tug assistance directly with a tug service provider.

**C. LINE HANDLING SERVICES**

Line handling services shall be assessed to each Vessel for Vessels mooring to the Berth and a separate charge for Vessels mooring to the Buoys. The rate for mooring to the Berth is not subject to a fuel surcharge unless a crew boat is needed to secure the Vessel at the Berth. The rate for mooring to the Buoys is subject to Terminal's fuel surcharge. Line handling charges include both mooring and unmooring of each Vessel but do not include any additional line services which may be required by the Vessel, such as line assistance for warping, which can be discussed on a case by case basis. There is a retie cost in the Berth or at the Buoys.

**D. LAUNCH SERVICES**

Terminal Operator will provide launch access to/from the Vessels in conjunction with the calculation of dockage days. Terminal's launch service per-day fee is subject to Terminal's fuel surcharge. Terminal Operator reserves the right to refuse service to anyone wishing to utilize Terminal's launch service who in Terminal Operator's opinion is a risk to safety or is visiting for a reason other than official ship's business. Terminal Operator will not permit any stores, pallets, cylinders, lubes, etc. to be delivered to any Vessel via its launch service.

**E. SECURITY FEES**

Terminal Operator will assess and collect a security fee per day to each Vessel moored at the Berth and to each Vessel moored at the Buoys. The security fee is not subject to Terminal's fuel surcharge and the

day shall be determined as per the dockage and launch calculations. It should be noted that this security fee does not constitute providing security for the Vessel if so ordered by a U.S. government agency. In such a case, the vessel agent shall arrange security guards on behalf of the Vessel and at the Vessel's expense. The security fee shall be in addition to all other fees and charges due hereunder.

#### **F. ACCESS FEE**

Terminal Operator will assess a terminal access a per-person fee each way for any Visitor who wishes to transit through Terminal's terminal boundaries to or from the Vessel. Terminal Operator reserves the right to refuse passage of anyone whom Terminal Operator deems is a risk to safety or is visiting for a reason other than official ship's business. Proper credentials must be presented to Terminal's security officer and it is recommended that advance arrangements be made for any such passage in order to avoid unnecessary delays. Vessel agents and marine surveyors who are performing official ship's business for the present voyage shall be exempt from this fee and access through Terminal will only be granted to agents and surveyors who are in possession of a valid Transportation Worker Identification Card (TWIC).

#### **G. FUEL SURCHARGE**

Terminal Operator will assess a fuel surcharge on towage, line handling and launch services. The surcharge is designed to move up or down in direct relation to the cost of fuel on the date of our service. Terminal's fuel surcharge is one (1 %) percent for each 3¢ per gallon above \$2.00 at the time of first service provided to the Vessel. Terminal's fuel surcharge will not apply towards dockage charges. The following is an example of the fuel surcharge:

Fuel charge from tug subcontractor: \$3.50

Surcharge:  $\$3.50 - \$2.00 = \$1.50$

$\$1.50/\$0.03 = 50$

$50 \times 0.01 =$  a 50% surcharge added to the towage, line handling, and launch charges set forth on Appendix I hereto.

#### **H. DOCK DETENTION PENALTY**

Terminal Operator shall be entitled to charge and recover from Ocean Vessel and the Vessel Party as liquidated damages 115% of the then-current hourly dockage rate per hour (with partial hours prorated) beginning one (1) hour after delivery of the notice to vacate and continuing as long as the Ocean Vessel remains in the Terminal, regardless of any intervening circumstances of any nature.

Terminal Operator shall not provide any gangways. Terminal Operator reserves the right to deny use of Terminal and/or to provide above mentioned services solely at Terminal Operator's discretion, including during changes in MARSEC level, river conditions or severe weather events. All fees must be paid in advance to Terminal based on the estimated fees prior to Vessel's berthing unless otherwise mutually agreed between Terminal Operator and the Vessel.

#### **I. WHARFAGE RATES**



Wharfage will be charged for Vessels loading/unloading/transshipping Cargo directly to or from other Vessels/barges at standard wharfage rates. Wharfage shall be negotiated between Terminal Operator and the Vessel prior to any loading/unloading/transshipping taking place. No such loading/unloading/transshipping shall occur without the prior approval of Terminal Operator and, if necessary, the U.S. Coast Guard.

**J. LAYBERTH**

A Vessel berthed at Terminal for nonloading purposes (i.e., layberth) shall be charged at the same rates as those berthed for loading/unloading purposes.

**K. RIVER BARGE COVER HANDLING**

Any river barges requiring assistance by Terminal Operator in handling river barge covers shall be charged for the service at a rate of \$1,250 per barge.

**L. WATER**

Water flow and access to water mains is limited. Arrangements for water shall be made with Terminal Operator in advance of berthing the Vessel and such arrangements will be made for the convenience of the Vessel only. Water, when available, will be furnished at a rate of \$3,500 per water barge. Prior approval and coordination by Terminal Operator shall be required for water delivered by water barge. Terminal Operator shall not provide potable water to Vessels.

**Appendix I: Rate Schedule**

<b>Service</b>	<b>Berth</b>	<b>Buoy</b>
<b>Dockage</b>	0.46 Per GRT Per 24 Hour Period	0.46 Per GRT Per 24 Hour Period
Minimum Dockage	\$7500.00 Per Day	\$7500.00 Per Day
<b>Towage</b>	\$3500.00 Per Tug	\$3950.00 Per Tug
Warping Assistance	\$975.00 Per Hour	\$975.00 Per Hour
Hold In Tugs	\$975.00 Per Hour	\$975.00 Per Hour
Tug Delays / Standby	\$975.00 Per Hour	\$975.00 Per Hour
<b>Line Handling</b>	\$3500.00 Includes In And Out	\$4000.00 Includes In And Out
Re-Tie Cost	\$600.00	\$600.00
<b>Launch Service</b>	\$1200.00 Per Day	\$1200.00 Per Day
<b>Security Fees</b>	\$1250.00 Per Day	\$950.00 Per Day
<b>Access Fee</b>	\$50.00 Per Person Each Way	\$50.00 Per Person Each Way
<b>Vacate Berth</b>	115% of then-current hrly dockage	115% of then-current hrly dockage
<b>Fuel Surcharge</b>	One (1%) Percent For Each 3¢ Per Gal.	One (1%) Percent For Each 3¢ Per Gal.
Fuel Base Cost	\$2.00 Per Gal.	\$2.00 Per Gal.
Bunkers	Not Permitted	Not Permitted

**Schedule 2. BERTH APPLICATION FORM**

**IMPALA WAREHOUSING (US) LLC**  
**BERTH APPLICATION AND ACCEPTANCE OF FINANCIAL RESPONSIBILITY**



**E-MAIL: BurnsideShips@Impala-wl.com**  
**FAX: (225) 289-5225**  
**TERMINAL OFFICE PHONE: (225) 289-5211**

THIS APPLICATION MUST BE SUBMITTED AS FAR IN ADVANCE OF THE DATE OF BERTHING AS POSSIBLE. AGENT WILL PROMPTLY NOTIFY THE APPROPRIATE VESSEL SCHEDULING OFFICE OF ANY CHANGES IN THE INFORMATION SUPPLIED BELOW. AGENTS ARE ADVISED THAT BLANK ENTRIES ON THIS FORM MAY RESULT IN REJECTION OF THIS BERTH APPLICATION BY TERMINAL OPERATOR. TERMINAL OPERATOR WILL NOTIFY AGENT OF UNACCEPTABLE APPLICATIONS.

VESSEL PARTICULARS					
VESSEL NAME / VOYAGE NUMBER	FLAG	G.R.T	L.O.A	BEAM	MAX DRAFT
					FTIN
VESSEL OWNER/OPERATOR/CHARTERER/LINE	P & I CLUB / LOCAL CONTACT				LLOYDS NO.
EST. BOARDING DATE/TIME	EST. DEPARTURE DATE/TIME		BERTH REQUESTED/SHIFTS		
INBOUND CARGO AND ESTIMATED METRIC TONS					
OUTBOUND CARGO AND ESTIMATED METRIC TONS					
APPOINTED STEVEDORE		LAYBERTH	LIGHTER	FRESH WATER	
NOTE: Agents are advised that safety guidelines are set by the local pilots associations in regard to vessel length, draft, beam, air draft, and other factors that may affect the transit of the vessel into the Terminal. Please consult with the local pilots associations to determine if any restrictions apply.					

Any ballast removed from the vessel after loading commences must be coordinated with the management at the Burnside Terminal. It is understood and agreed that ship officials will acknowledge cargo receipt at the Burnside Terminal by signing and releasing a clean Mates' Receipt immediately upon completion of loading.

**THE UNDERSIGNED COMPANY, AGENTS FOR THE ABOVE-NAMED VESSEL, IN CONSIDERATION FOR APPROVAL OF THE BERTH APPLICATION, AGREES TO BE BOUND BY ALL RULES, REGULATIONS, TERMS, CONDITIONS AND CHARGES AS PUBLISHED BY TERMINAL OPERATOR, INCLUDING ACCEPTANCE OF FINANCIAL RESPONSIBILITY THEREFOR.**

DATE OF APPLICATION	APPLICANT COMPANY NAME AND BILLING ADDRESS	PRINT NAME AND JOB TITLE	
		Name	
		Title	
		Signature	
IMPALA USE ONLY	APPROVED Subject to Availability	CREDIT OK	JOB NUMBER ASSIGNED

### **Schedule 3. FORM OF TERMINAL ACCESS AGREEMENT**

#### **TERMINAL ACCESS AGREEMENT**

This Terminal Access Agreement (this “**Access Agreement**”) is entered into on \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by and between Impala Warehousing (US) LLC (“**Impala**”), and \_\_\_\_\_ (“**Invitee**”). Impala and Invitee are sometimes hereinafter referred to individually as “**Party**” and/or collectively as “**Parties.**”

#### **RECITALS**

**WHEREAS**, Invitee desires the right to access the Terminal (defined below); and

**WHEREAS**, Impala agrees to provide access to Invitee to the Terminal subject to the terms and conditions of this Access Agreement.

**NOW THEREFORE**, in consideration of the mutual premises and covenants set forth herein, Impala and Invitee hereby agree as follows:

#### **AGREEMENT**

- 1.0 Term.** The term of this Access Agreement shall commence on the Effective Date and conclude immediately upon written notice of termination provided by Impala to Invitee. All obligations accrued by both Parties prior to such termination date shall survive termination.
- 2.0 Access.** Impala hereby grants Invitee and such of its agents, representatives and Invitees (collectively, “**Agents**”) and each of its and their employees, all as designated in writing to Impala from time to time the right and privilege to access its bulk terminal facility in Darrow, Louisiana (the “**Terminal**”). Invitee, its Agents and each of its and their respective employees shall access the Terminal in a manner as to cause minimum interference with Impala’s operations.  
  
Invitee shall be absolutely responsible and liable for its Agents and their actions, and for their compliance and/or non-compliance with the terms and conditions of this Access Agreement.
- 3.0 Terminal Rules.** Invitee agrees to comply with and to cause its Agents to comply with all rules posted by Impala at the Terminal, as in effect from time to time.
- 4.0 Compliance with Laws and Regulations.** Invitee agrees to comply and to cause its Agents to comply with all federal, state and local laws, statutes, ordinances, rules, and regulations that may be applicable to Invitee’s and its Agents activities at the Terminal. Invitee shall obtain and cause its Agents to obtain all permits and licenses required by law.
- 5.0 Controlled Substance Abuse.** Invitee shall have adopted policies and procedures to ensure a drug and alcohol free work place. Invitee will enforce its policy with appropriate drug and alcohol testing programs. Invitee’s testing policy will specify substances, testing frequency and threshold levels which, at a minimum, comply with the Department of Transportation drug testing regulations.
- 6.0 Safety of Invitee’s Vehicles and Equipment.** Invitee agrees that all vehicles and equipment owned, leased or otherwise under the control of the Invitee and its Agents will be properly maintained, and in a safe condition. Invitee shall remove any equipment that in Impala’s discretion poses a safety hazard at the Terminal. In the event Invitee fails to remove such unsafe equipment, Impala has the right to remove the unsafe equipment with Invitee paying or reimbursing Impala for the cost of such removal.
- 7.0 Incident Reporting.** Invitee must report all incidents (including accidents and near misses) that occur at the Terminal in writing to Impala within twenty-four (24) hours following such incident. The report should

*Burnside Terminal Rules and Regulations*  
*Effective: December 14, 2012*

describe the incident and include any investigative materials or documents that Invitee completes, and any related documentations and reports submitted to any entity, including but not limited to, any governmental agency, Invitee's insurance, or others.

- 8.0** **No Agency Relationship.** Neither Invitee nor its Agents act under the direction, control, or supervision of Impala and none of the foregoing is an agent of Impala.
- 9.0** **Insurance.** Invitee shall maintain at all times those minimum insurance requirements set forth in Schedule I attached hereto and supply Impala with evidence thereof before accessing the Terminal.
- 10.0** **Indemnification**
- 10.1** **Duty to Indemnify Impala Group.** Except as expressly provided otherwise in this Access Agreement, **INVITEE SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS** Impala, Impala's general partner, subsidiaries, affiliates, and members and each of its and their respective officers, directors, employees, agents, contractors, successors, and assigns (excluding any member of Invitee Group) (collectively the "**Impala Group**") from and against all claims, suits, causes of action, demands, losses, liabilities, damages, costs, expenses, fees (including, but not limited to, reasonable attorney's fees), and court costs (collectively "**Claims**"), inclusive of Claims made by third parties, arising from or relating to any injury to or death of persons and/or damage, loss, or injury to any property, **EXCEPT TO THE EXTENT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF IMPALA OR ANY MEMBER OF IMPALA GROUP.**
- 10.2** **Duty to Indemnify for Pollution Events.** Notwithstanding anything to the contrary in this Access Agreement, in the event of any escape, release, discharge, threat of discharge, or disposal of any pollutants or hazardous materials from any member of Invitee Group's vehicles or equipment or otherwise caused by any member of the Invitee Group while in, on, or adjacent to the Terminal (each such event a "**Pollution Event**"), Impala shall have the right to commence emergency response and containment or clean-up activities, as deemed appropriate or necessary by Impala or required by any governmental authorities, and shall notify Invitee, as soon as reasonably possible, of such activities. **INVITEE SHALL ASSUME ALL RESPONSIBILITY FOR, AND SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS IMPALA GROUP FROM AND AGAINST, ANY AND ALL CLAIMS ARISING FROM OR RELATING TO A POLLUTION EVENT EXCEPT TO THE EXTENT THAT INVITEE SHALL SHOW ANY SUCH POLLUTION EVENT IS CAUSED BY THE SOLE NEGLIGENCE OF IMPALA.**
- 10.3** **No Limitation.** The scope of these indemnity provisions may not be altered, restricted, limited, or changed by any other provision of this Access Agreement. The indemnity obligations of the Parties as set out in this Section 10 are independent of any insurance requirements as set out in Section 9, and such indemnity obligations shall not be lessened or extinguished by reason of a Party's failure to obtain the required insurance coverages or by any defenses asserted by a Party's insurers.
- 10.4** **Waiver of Consequential and Other Damages.** **EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, NO MATTER HOW CHARACTERIZED, RELATING TO THIS ACCESS AGREEMENT AND ARISING FROM ANY CAUSE WHATSOEVER.**
- 10.5** **Survival.** The indemnity and other such obligations contained herein shall survive the termination of this Access Agreement for any reason until the applicable statute of limitations has run.
- 11.0** **Notice/Contact Information.** Any notice, request, order or demand required or permitted to be given under this Access Agreement to either Party, other than a request for service, shall be in writing and conveyed to the Party to be notified at the email address set forth on the signature page hereto, and be

*Burnside Terminal Rules and Regulations*  
*Effective: December 14, 2012*

deemed given upon sending. Either Party may change its email address to which Notice is to be given to it by giving written notice as provided above of such change of email address.

**12.0 Miscellaneous.**

- 12.1 Governing Law; Jurisdiction.** This Access Agreement and the rights and obligations between the Parties shall be governed by, construed in accordance with, and enforced under the laws of the State of Louisiana without giving effect to its conflicts of law provisions. The Parties irrevocably and unconditionally consent and agree to submit to the exclusive jurisdiction of the State or Federal courts located in Baton Rouge, Louisiana. The Parties further irrevocably and unconditionally waive any objection based upon lack of personal jurisdiction, improper venue or forum *non conveniens* in this jurisdiction and consent to the granting of such legal or equitable relief as is deemed appropriate by the federal courts in this jurisdiction.
- 12.2 Severability.** If any provision of this Access Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability will not affect any other provision of this Access Agreement. In that event, the Parties agree to amend or reform this Access Agreement to effect as closely as possible the original intent of the Parties.
- 12.3 Entire Agreement; Amendment; Waiver.** This Access Agreement and Schedule I constitute the entire agreement between the Parties regarding the transactions contemplated herein. Any previous agreements and understandings between the Parties regarding these transactions, whether written or oral, are superseded by this Access Agreement. Any amendment or waiver of any requirements and/or provisions of this Access Agreement must be in writing and signed by an officer or authorized representative of each Party.
- 12.4 Assignment.** This Access Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Invitee may not assign this Access Agreement nor grant any rights hereunder, nor shall activities be performed under this Access Agreement by a contractor or subcontractor of Invitee, without the express prior written consent of Impala.
- 12.5 Counterparts.** This Access Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. To the maximum extent permitted by law, any document may be signed and transmitted by facsimile with the same validity as if it were an ink-signed document.

[SIGNATURE PAGE FOLLOWS.]

*Burnside Terminal Rules and Regulations*  
*Effective: December 14, 2012*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Access Agreement to be duly executed by their respective authorized signatories as of the Effective Date.

**IMPALA WAREHOUSING (US) LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Notice Information:

Impala

Attention: Terminal Manager

Email: Randy.Comeaux@impala-wl.com

With a mandatory copy to:

Attention: General Counsel  
HoustonLawyers@trafigura.com

**INVITEE [Insert Entity]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Notice Information:

Invitee

Attention: \_\_\_\_\_  
- \_\_\_\_\_  
- \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
SCAC Code: \_\_\_\_\_  
EIN: \_\_\_\_\_  
State License Number/Transporter's Number: \_\_\_\_\_