

Standard Terms and Conditions applicable at Kingston Container Terminal operated by Kingston Freeport Terminal Limited

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context otherwise dictates, where the words are capitalised the following meanings apply:

- 1.1.1. ***Administrative Department*** means departments of KFTL that are not directly involved with the provision of Stevedoring Services to the Shipping Line and include the Executive Suite, Finance and Business Administration and Procurement Department, Legal and Insurance Department and Human Resources and Industrial Relations Department;
- 1.1.2. ***Agreement*** means this document and all schedules hereto as any or all may be amended from time to time;
- 1.1.3. ***Applicable Law*** means the laws of Jamaica, international laws, rules and regulations that are binding in Jamaica and/or applicable to the Vessel, Cargo, Containers and/or the Owners as the same may be amended from time to time;
- 1.1.4. ***Berth*** means the North, West and/or South Berth of the Terminal;
- 1.1.5. ***Berthing Window*** means an indicative period of time at which KFTL will allow the Shipping Line to berth at a Berth and KFTL will provide the Services to the Shipping Line;
- 1.1.6. ***Business Days*** means any Monday to Friday (inclusive) that is not a Public General Holiday in the island of Jamaica;
- 1.1.7. ***Cargo*** means goods of any kind, transported or to be transported, whether containerized or not, and includes Hazardous Cargo and Out of Gauge Cargo that are, have been or are to be carried to or from the Terminal on a Vessel or landbound vehicle including Cargo handled by KFTL on a Vessel but without being discharged therefrom;
- 1.1.8. ***Charges*** means sums to be paid by the Shipping Line to KFTL pursuant to clause 10 of this Agreement;
- 1.1.9. ***Container*** means any empty or loaded shipping container, used for the transportation of Cargo. Such Containers usually being (but not having to be) limited to 20', 40', or 45' long and 8' wide and 8'6" or 9'6" high, out-of-gauge Containers (including flat racks, platforms and bolsters), refrigerated containers (each a "***Reefer Container***"), and tanks, as well as all equipment affixed to a Container (including, without limitation, generator sets) that have been or are to be carried to the Terminal on a Vessel including a Container handled by KFTL on a Vessel but without being discharged therefrom;

1.1.10. **Force Majeure** means any event or circumstance or combination of events or circumstances whenever occurring which in each case is outside the control of the affected Party, could not be avoided, prevented, overcome or mitigated with reasonable foresight, prudence and diligence and actually prevents the performance of a Party's obligations pursuant to this Agreement and includes without limitation

- 1.1.10.1. acts of God or other natural disaster, epidemic or pandemic;
- 1.1.10.2. terrorist attack, riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 1.1.10.3. any law or action taken by a government or public authority, including but not limited to imposition of an export or import restriction, quota or prohibition;
- 1.1.10.4. any fire, explosion, nuclear reaction, shortage of power, fuel, transport or materials necessary for the performance of the Contract, abnormally high prices, obstruction of access to the Terminal, or accident including but not limited to the breaking adrift of any vessel from the Terminal;
- 1.1.10.5. any labour or trade dispute, strikes, industrial action, lockouts or sabotage;
- 1.1.10.6. any defect, inherent vice or natural property of the goods and/or change in quality of the goods or its packaging, containers or means of transport, and damage caused by other goods, delay in delivery of the goods to or from the Terminal on the part of any person other than KFTL, its employees or agents, failure in or delayed arrival of packing materials, containers or means of transport used in respect of:
  - 1.1.10.6.1. the goods or a third party's interference with the Services/facilities; and/or
  - 1.1.10.6.2. any other circumstances the occurrence or extent of which KFTL could not reasonably have controlled, foreseen, avoided, prevented or forestalled, including, without limitation, a third party's interference with KFTL's computer systems, hacking, cyber-attack, computer viruses, the stability or availability of the Internet or a portion thereof or a network or device failure external to KFTL's data centre.

1.1.11. **Government Agency** means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person

(whether autonomous or not) who is charged with the administration of law and/or protection of people, property and/or the environment;

- 1.1.12. **Government Fees** means any and all sums payable by the Shipping Line which sums are levied by a Government Agency or pursuant to Applicable Law and payable (directly or indirectly) to a Government Agency;
- 1.1.13. **Hazardous Cargo** includes Cargo:
  - 1.1.13.1. That may injure people and/or damage property and/or the environment;
  - 1.1.13.2. That are or may become dangerous, poisonous, corrosive, volatile, explosive or radioactive;
  - 1.1.13.3. That is classified in the International Maritime Dangerous Goods Code (IMDG) or other Applicable Law as a hazardous or dangerous substance or commodity; and/or
  - 1.1.13.4. The movement of which is restricted, prohibited or controlled in Jamaica pursuant to the Nuclear Safety and Radiation Protection Act and/or Customs Act and/or other Applicable Law and/or any rules or regulations under any of them;
- 1.1.14. **Operational Department** means the Operations Department of KFTL;
- 1.1.15. **Owner** means the Shipping Line and/or the owner of the Cargo and/or Container as appropriate.
- 1.1.16. **Port Terminal Facility** means manpower, unoccupied berth, available storage space on KFTL's yard and required Container and/or Cargo handling equipment;
- 1.1.17. **Restows** means either moving a Container on board a Vessel or the discharge and subsequent reloading of a Container from/to the same Vessel;
- 1.1.18. **Services** means any and all services provided to the Shipping Line at the Terminal or in its environs by KFTL, its servants and/or agents including Stevedoring services, storage of containers, managing of Reefer Containers, mooring and unmooring of Vessels, berthing of Vessels and security services as better described in Schedule 1 of this Agreement;
- 1.1.19. **Shipping Line** means any whole and/or partial owner (registered and/or beneficial), time, voyage, slot, Vessel charterer, manager, master, agent, or operator of a seagoing ship that berths at the Terminal;
- 1.1.20. **Specific Agreement** means a comprehensive contract specifically signed between KFTL and an Owner in relation to that KFTL providing Services to the Owner at the Terminal;
- 1.1.21. **Standard Operating Procedures** means operating procedures/instructions that KFTL may issue from time to time and to which the Shipping Line is required to adhere in accordance with clause 6.10 of this Agreement. Standard Operating

Procedures may speak to a variety of matters regarding how the Services are provided including delivery of Containers/Cargo to the Terminal, documentation required from the Shipping Line and the scheduling of Vessels and/or the carrying out of Vessel Safety Inspection. The Standard Operating Procedures are available at KFTL's website;

- 1.1.22. **Stevedoring** means the physical handling of Containers/Cargo that is on a Vessel or in the Terminal or the loading or unloading of Containers/Cargo to or from a Vessel while at the Terminal and includes the supervision and management of this process;
- 1.1.23. **Terminal** means the Kingston Container Terminal that is operated by KFTL and located at the Port of Kingston in Jamaica W.I.;
- 1.1.24. **Transhipment** means the discharge and subsequent loading of a Container/Cargo from one Vessel to another Vessel within the Terminal;
- 1.1.25. **Shipping Line Equipment** means any equipment including, without limitation, lashing equipment and twist locks and/or software supplied by or for the Shipping Line to KFTL to facilitate KFTL in providing the Services;
- 1.1.26. **Vessels** means any floating craft fitted for the carriage of Containers or non-containerized Cargo, whether below or above deck, and all equipment attached thereto and shall include all such crafts whether owned, chartered, operated or leased by the Shipping Line;
- 1.1.27. **Vessel Safety Inspection** means an inspection of the Vessel carried out jointly by representatives of the Shipping Line and KFTL with a view to ascertaining the physical condition of the Vessel particularly as it relates to any pre-existing damage and physical conditions that may render the Vessel, or part thereof, unsafe for the carrying out of the Services. The safety concerns in question include, but are not limited to, those which may render the Vessel vulnerable to damage/further damage and/or which may put KFTL's personnel at risk to injury or death;
- 1.1.28. **Website** means [www.kingstonfreeport.com](http://www.kingstonfreeport.com) or such other website as KFTL may from time to time designate.

- 1.2. In this Agreement unless the context otherwise requires:
  - 1.2.1. words importing any gender include every gender;
  - 1.2.2. words importing the singular number include the plural number and vice versa;
  - 1.2.3. words importing persons include firms, companies and corporations and vice versa;
  - 1.2.4. references to numbered clauses and schedules are references to the relevant clause in or annexure to this Agreement;
  - 1.2.5. reference in any schedules to this Agreement to numbered paragraphs relate to the numbered paragraphs of that annexure;

- 1.2.6. any obligation on any Party not to do or omit to do anything includes an obligation not to allow that thing to be done or omitted to be done;
- 1.2.7. the headings to the clauses, schedules and paragraphs of this Agreement do not affect the interpretation;
- 1.2.8. any reference to an Applicable Law includes reference to that Applicable Law as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- 1.2.9. where the word '***including***' is used in this Agreement, it shall be understood as meaning '***including without limitation***'.

1.3. These terms and conditions, Schedules 1 and 2 shall be taken as complementary and mutually explanatory of one another and anything in one shall be deemed to be in other. However, in the event of irreconcilable inconsistency they shall take precedence over each other in the following order: Schedule 1, these terms and conditions then Schedule 2.

## **2. NOTICE AND BINDING EFFECT**

2.1. Whereas:

- 2.1.1. Kingston Freeport Terminal Limited ("**KFTL**") is the operator of the Terminal and provides the Services at the Terminal; and
- 2.1.2. The Owner wishes to be provided with the Services at the Terminal and KFTL is willing to provide the same.

Then:

- 2.1.3. The use of the Terminal and acceptance of Services by the Owner from KFTL after June 20, 2023 ("**Appointed Day**") shall be deemed to constitute notice of and agreement to this Agreement; and
- 2.1.4. The Owner expressly warrants that it is authorised to accept and is accepting this Agreement on its own behalf and as the agent of any person who has or may hereafter acquire title to or otherwise have an interest in the Cargo and/or Containers.

## **3. APPLICATION**

3.1. This Agreement applies to all legal relationships between KFTL and the Owner whether in contract, bailment, tort or otherwise and will apply by reason of the Owner's express acceptance hereof, or will be implied from the entry of any Vessel into the Terminal, the submission of any documentation to KFTL that refers to the landing of Cargo at the Terminal, the use of the Berth by the Shipping Line's Vessels for the loading and or discharging of Cargo and/or Containers at the Terminal and/or the delivery of Cargo and/or Containers to the Terminal for handling by KFTL SAVE AND EXCEPT THAT these Terms and

Conditions do not apply to any Shipping Line that has a Specific Agreement with KFTL whether signed before or after the Appointed Day.

#### **4. TERM AND SCOPE OF THIS AGREEMENT**

- 4.1. This Agreement shall govern all Services provided by KFTL to the Owner.
- 4.2. The Parties agree to at all times during the continuance of this Agreement to comply with Applicable Law.
- 4.3. The Owner agrees that during the continuance of this Agreement it, and its servants and agents will comply with any lawful and reasonable requests from KFTL related to the Services provided under this Agreement including those related to health and safety provided they are compliant with international standards.

#### **5. PROVISION OF SERVICES**

- 5.1. The Services are detailed in Schedule 1 of this Agreement and they shall be provided by KFTL in a such manner and with such Port Terminal Facilities as its reasonably considers appropriate and expedient for the relevant Vessel, Cargo and/or Container unless KFTL and the Owner agree in advance and in writing to any particular manner of provision of Services by KFTL.
- 5.2. KFTL will provide the Services to the Owner at the Terminal in common with other persons, that is on a non-exclusive basis, in accordance with the terms of this Agreement and in compliance with Applicable Law.
- 5.3. KFTL may, in its absolute discretion, grant priority use of the Berth and/or prioritise the performance of Services to some persons rather than others based on such considerations as KFTL deems relevant including prioritising persons that have a Specific Agreement with KFTL, have a long standing relationship with KFTL, have an agreement with KFTL to call regularly at the Terminal and/or have greater volumes at KFTL.
- 5.4. Without limiting any wider powers it may have KFTL may, in its absolute discretion, direct the Shipping Line to have its Vessel, at the expense of the Shipping Line, leave the Berth by a stated time when the scheduled work programme for the Vessel does not require immediate or continuous operations at the Terminal or otherwise. Should the Shipping Line fail, neglect and/or refuse to vacate the Berth by the stated time KFTL may charge the Shipping Line for each hour or part thereof that the Vessel remains at the Berth after the stated time.
- 5.5. The obligation of KFTL to provide any particular Service to is at all times subject to the availability of the relevant Port Terminal Facilities required for the particular Service at the material time. Such availability will be determined with reference to, amongst other things, the number of vessels berthed/scheduled to be berthed at the Terminal at the material time, the capacity of the Terminal's yard and the number of Containers and/or Cargo therein.

- 5.6. **KFTL SHALL HAVE NO LIABILITY TO THE OWNER FOR FAILURE TO:**
  - 5.6.1. **UNDERTAKE OR COMPLETE THE LOADING/UNLOADING OF ANY VESSEL OR VEHICLE, OR**
  - 5.6.2. **PROVIDE A BERTH AT THE TERMINAL FOR ANY VESSEL,**  
**NOTWITHSTANDING ANY REPRESENTATION MADE BY KFTL, AND THE OWNER SHALL INDEMNIFY KFTL FROM AND AGAINST ALL LIABILITY AND COSTS THAT KFTL MAY HAVE TO A THIRD PARTY BY REASON OF SUCH FAILURE.**
- 5.7. KFTL may subcontract on any terms the performance of all or any part of the Services.
- 5.8. KFTL may cease to provide any of the Services at any time provided that notice of the cessation of the Service is published on the Website 30 days in advance of the cessation thereof save in the case of emergency in which case no notice shall be required.
- 5.9. KFTL shall supply all labour and handling equipment necessary for the Services with the exception of equipment used for the securing of Containers on board the Vessel, including lashing equipment and twist locks, which shall be provided by the Shipping Line. The Shipping Line shall not employ and/or contract any person other than KFTL to carry out the Services at the Terminal without the express prior written consent of KFTL.
- 5.10. KFTL accepts Cargo and/or Containers for shipment on a Vessel only as the agent of the Owner thereof and in so accepting does not imply that the Cargo and/or Containers will be shipped as the acceptance and/or refusal of Cargo and/or Containers for shipment remains the responsibility of the Owner. KFTL may, as an example, refuse to load a Container and/or Cargo where the same and/or the relevant documentation in relation to the same are not in conformity with Applicable Law.
- 5.11. KFTL is entitled, but not obliged, to refuse to receive a Container and/or Cargo from or deliver a Container and/or Cargo to a person at the Terminal or to otherwise suspend the Services or part thereof if:
  - 5.11.1. The correct information and/or documentation in relation to the Container and/or Cargo is not provided at the required time;
  - 5.11.2. The Container is improperly sealed;
  - 5.11.3. In the case of Out Of Gauge Cargo it is not properly secured for safe and efficient handling;
  - 5.11.4. The Container and/or Cargo is improperly labelled;
  - 5.11.5. If Applicable Law prohibits the Container and/or Cargo from being imported to, transhipped through or exported from KFTL;
  - 5.11.6. Any information, declaration etc. required by Applicable Law and/or by KFTL to be provided in relation to the Container and/or Cargo has not been fully provided or is deemed to be materially inaccurate by KFTL;

5.12. KFTL is under no obligation to receive a Container and/or Cargo from or deliver the same to any person that fails, neglects and/or refuses to comply with the safety and/or security protocols of KFTL.

## **6. COVENANTS OF THE SHIPPING LINE**

- 6.1. The Shipping Line will ensure that all Vessels are safe, stable, seaworthy, secure and fit for purpose and that they do in these and all other respects comply with relevant international standards and Applicable Law in that regard. Where a Vessel does not meet the requirements stipulated in this clause KFTL may, without incurring any liability to the Owner refuse to provide any or all Services in respect of the Vessel and **THE SHIPPING LINE SHALL INDEMNIFY KFTL FOR ANY AND ALL LIABILITIES, COSTS, DAMAGES LOSSES, EXPENSES INCURRED, CLAIMS, FINES, PENALTIES, DEMANDS AND SUITS (INCLUDING LEGAL FEES AND EXPENSES AND INTEREST) AND ANY OTHER CONSEQUENCE ARISING OUT OF OR IN CONNECTION WITH THE FACT THAT THE NONCOMPLIANT VESSEL HAS CALLED AT THE TERMINAL.**
- 6.2. The Shipping Line will ensure that at no time during cargo operations will the trim nor the heel exceed 2 degrees.
- 6.3. The Shipping Line will ensure that all Shipping Line Equipment is fit for the purpose for which it is supplied and free from defects in materials, design, workmanship, and installation including free from computer viruses.
- 6.4. The Shipping Line will ensure that all lashing equipment and twist locks are stored so as to be accessible by KFTL as close as practicable to the area in which relevant Services are being carried out or at such other location as KFTL may designate.
- 6.5. Where requested by KFTL the Shipping Line shall facilitate a Vessel Safety Inspection of a Vessel. If KFTL's representative identifies any issue that could reasonably endanger the safety of KFTL's servants and/or agents KFTL shall notify the Shipping Line thereof in writing and may opt not to carry out Services in the affected area of the Vessel or at all. The Shipping Line shall rectify the identified issue as soon as possible and until this is done to the reasonable satisfaction of KFTL then KFTL shall not be obliged to carry out Services in the affected area of the Vessel, or at all, whether on the immediate or any subsequent call of the Vessel at the Terminal.
- 6.6. No Vessel Safety Inspection, whether the same finds a safety issue or not and whether such an issue is notified to the Shipping Line or not, shall relieve the Shipping Line of any liability it would otherwise have had in relation to any damage, loss, injury or expense incurred by the Shipping Line, its servants and/or agents.
- 6.7. The fact that KFTL may not request a Vessel Safety Inspection of the Vessel or any part thereof shall not relieve the Shipping Line of any liability it would otherwise have had in relation to any damage, loss, injury or expense incurred by the Shipping Line, its servants and/or agents.

- 6.8. The Owner will ensure that it complies with all Applicable Laws and standards and regulations in regard to Containers and Cargo so that the same may be legally and safely handled by KFTL in the manner contemplated by this Agreement.
- 6.9. The Owner will pay the Charges in accordance with the provisions of this Agreement.
- 6.10. The Owner will abide by any Standard Operating Procedures.
- 6.11. The Owner will comply with all lawful directives of Government Agencies.
- 6.12. The Owner is responsible for and will pay any and all Government Fees and fully indemnify KFTL against any claims for the same.
- 6.13. **INSOFAR AS THE OWNER PROVIDES ANY INFORMATION TO KFTL PURSUANT TO THIS AGREEMENT AND/OR TO FACILITATE THE PROVISION OF THE SERVICES AND THE SAME IS INACCURATE THE OWNER SHALL FULLY INDEMNIFY KFTL FOR ANY RESULTING LOSS, CLAIMS, EXPENSES AND/OR DEMANDS. KFTL HAS NO OBLIGATION TO SEEK VERIFICATION OF ANY INFORMATION THAT IS PROVIDED TO IT BY THE OWNER.**
- 6.14. The Owner shall provide all approvals required by Applicable Law upon request from KFTL and/or where required by KFTL's Standard Operating Procedures.

## **7. UNDERTAKINGS IN RELATION TO CARGO**

- 7.1. In relation to Cargo handled at the Terminal the Owner agrees that it shall:
  - 7.1.1. Comply with all Applicable Laws;
  - 7.1.2. Be properly packed and/or fit to withstand the ordinary risks of the Services;
  - 7.1.3. Not be dangerous, hazardous, poisonous, flammable toxic or liable to become so in the form in which it is delivered and/or in which they are to remain while on the Terminal, nor shall it be liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation;
  - 7.1.4. Be accurately described;
  - 7.1.5. Not be infested, verminous, rotten or subject to fungal attack and not liable to become so while on the Terminal;
  - 7.1.6. Not be over-heated or under-heated or liable to become so while on the Terminal;
  - 7.1.7. Not contaminate or cause danger, injury, pollution or damage to any person or any other Cargo, equipment or Vessel or the Terminal or the water or air adjacent thereto;
  - 7.1.8. Not require for their safekeeping any special protection (other than as may be agreed in writing with KFTL) arising from vulnerability to heat, cold, natural or artificial light, moisture, salt, pilferage, vandalism or proximity to other goods or from their flammability but will remain safe if left standing in the open on the Terminal or in covered accommodation (if agreed with KFTL);

- 7.1.9. Contain no unauthorised controlled drugs, contraband, illegal pornographic or other illegal matter;
- 7.1.10. Is properly and sufficiently packed, marked and weighed (for the purpose of the IVGM Regulations) in accordance with all Applicable Laws and accurately documented and labelled for all shipping, cargo handling, despatch, customs and like purposes.

## **8. HANDLING OF CARGO**

### Hazardous Cargo

- 8.1. The Shipping Line will give KFTL full details of any Hazardous Cargo on a Vessel prior to the Vessel arriving at the Terminal. The Shipping Line will be liable for any fines, claims or clean-up costs in any way incurred (other than through the negligence of KFTL its servants and/or agents) and relating to the Hazardous Cargo. KFTL shall have the right to refuse to handle Hazardous Cargo without incurring any liability to the Owner.
- 8.2. Without prejudice to the generality of sub-clause 8.1 where the Shipping Line brings Hazardous Cargo to the Terminal it and its servants and/or agents shall abide by all reasonable and lawful directives from KFTL.
- 8.3. Where the Shipping Line breaches sub-clauses 8.1, 8.2 and/or any relevant Standard Operating Procedure and as a result of this breach there is loss and/or damage to person and/or property as a result the Shipping Line shall fully indemnify KFTL for the same subject to clause 20.
- 8.4. IMO class 1 (except 1.4) and 7 cargo requires special permission to be obtained prior to the ship's arrival to the Terminal.

### Out of Gauge Cargo

- 8.5. WHERE THE SHIPPING LINE WILL REQUIRE KFTL TO HANDLE ANY OUT OF GAUGE CARGO IT SHALL OBTAIN PRIOR WRITTEN CONFIRMATION FROM KFTL THAT KFTL WILL HANDLE THE SAME PRIOR TO THE VESSEL BERTHING AT THE TERMINAL. FAILING WHICH KFTL SHALL HAVE NO OBLIGATION TO HANDLE THE RELEVANT OUT OF GAUGE CARGO AND SHALL HAVE NO LIABILITY WHATSOEVER TO THE SHIPPING LINE FOR ITS REFUSAL TO DO SO, INCLUDING BUT NOT LIMITED TO ANY RESULTING INABILITY OF KFTL TO HANDLE ANY OTHER CONTAINERS AND/OR CARGO ON THE VESSEL AND/OR TO LOAD ANY CONTAINERS AND/OR CARGO ONTO THE VESSEL OR TO ANY SPECIFIC POSITION ON THE VESSEL.

## **9. STANDARD OPERATING PROCEDURES APPLICABLE TO THE TERMINAL**

- 9.1. KFTL's applicable Standard Operating Procedures are available at KFTL's website and they may be amended from time to time in the discretion of KFTL in which event they shall be binding on publication on the Website.

9.2. Where Standard Operating Procedures have been issued the Owner acknowledges and accepts that the manner of provision of the Services will be guided thereby and that the failure of either or both Parties to comply therewith may negatively affect the provision of the Services. KFTL will have no liability to the Shipping Line where it is unable to provide fully or at all any Services due to the Shipping Line's breach of this Agreement.

## **10. CHARGES**

10.1. Unless otherwise expressly agreed by KFTL and the Owner the Charges reflected in Schedule 2 shall apply and payment terms shall be as reflected therein. For the avoidance of doubt, any re-handling, sorting or shifting of Cargo or Containers that is required through no fault of KFTL its servants and/or agents shall be billable to the Shipping Line. Without prejudice to clause 10.4 the Charges in Schedule 2 may be adjusted by KFTL once per calendar year and notice of the adjustment of the Charges shall be deemed to have been given sixty (6) days after their publication on the Website.

10.2. Where notice of adjustment of the Charges is given pursuant to clause 10.1 the continued use of the Terminal thereafter shall be deemed acceptance of the relevant adjusted Charges.

10.3. Irrespective of the terms of shipment the Shipping Line shall be liable to pay the Charges to KFTL.

10.4. KFTL may increase the Charges on thirty (30) days' notice where the change in the Charges are necessitated to account for:

- 10.4.1. An increase in the cost of labour;
- 10.4.2. A heightened level of security at the Terminal; and/or
- 10.4.3. A change in Applicable Law or Industry Practice.

In each case the increase in the Charges shall be in proportion to the increased cost being incurred by KFTL.

10.5. Save as expressly provided to the contrary the Shipping Line shall have no right to set off against the Charges any claim it has or alleges it has against the Shipping Line.

10.6. Save as expressly provided to the contrary the Shipping Line shall have no right to withhold payment of the Charges.

10.7. KFTL reserves the right, without incurring any liability to any person, not to deliver any Cargo and/or Container until all Charges and other sums payable in relation thereto have been paid.

## **11. SUMS PAYABLE TO THIRD PARTIES**

11.1. Unless otherwise stipulated in this Agreement the Charges set out in Schedule 2 are exclusive of any and all sums that the Owner may be liable to pay to any third party

including any Government Agency and in addition to such Charges the Owner shall pay all such sums to third parties including any and all:

- 11.1.1. Applicable Government Fees payable to a Government Agency and/or its designated payee; and
- 11.1.2. Third party service charges payable to third parties for services provided to Vessels, Containers and/or Cargo by third parties including waste reception, towage etc., and the Owner shall indemnify and hold KFTL harmless in respect of all liability to pay such third party service charges.

## **12. OPERATING HOURS**

- 12.1. The Administrative Departments of KFTL shall be open between 0800 hours and 1600 hours Jamaica time, Monday to Friday on any day that is not a Public General Holiday in the island of Jamaica.
- 12.2. The Operational Departments of KFTL shall be open 24 hours a day throughout the year SAVE THAT KFTL may, in its sole and absolute discretion temporarily suspend Services between 24 December (2200 hours) to 25 December (2200 hours) and 31 December (2200 hours) to 01 January (2200 hours) each year.

## **13. BERTHING WINDOW**

- 13.1. The Parties may from time to time agree to a Berthing Window for a Shipping Line. The Shipping Line understands and accepts that all agreed Berthing Windows are indicative only and that KFTL reserves the right to alter the same based on the circumstances at the material time including, but not limited to, the availability of the Port Terminal Facility and/or competing demands for the relevant Berthing Window or any part(s) thereof.
- 13.2. Where there is no:
  - 13.2.1. Agreement as to the Berthing Window for the Shipping Line's Vessel; or
  - 13.2.2. The Shipping Line's Vessel arrives outside of its Berthing Windowthe Vessels will be berthed at the discretion of KFTL based on the circumstances at the material time including, but not limited to, the availability of the Port Terminal Facility and/or competing demands for the Berth or any part(s) thereof.
- 13.3. It shall be solely the responsibility of the Shipping Line to monitor the Operations at the Terminal and to schedule their arrival and departure accordingly. KFTL shall have no liability to the Shipping Line for its failure to do so; this exclusion of liability applies to, without limitation, pilotage charges and charges associated with the cancellation of such services.

#### **14. TRANSFER OF RISK**

14.1. For the purpose of this Agreement, the custody of Containers and Cargo shall be transferred to and from KFTL as follows:

- 14.1.1. For export Containers or Cargo, upon entering the Terminal gate according to the relevant equipment interchange receipt ("EIR") issued by KFTL until the Container or Cargo is placed and released in its designated stowage position on board the Vessel and correctly stowed with the locking device engaged or when the Container or Cargo is placed properly in a suitable stowage position below deck;
- 14.1.2. For import Containers or Cargo, upon unlocking/disengaging of the locking device and unstowing of the Container or Cargo from its designated stowage position on board the Vessel until the Container or Cargo exits the Terminal gate according to the relevant EIR issued by KFTL; and
- 14.1.3. For Transhipment and Restow Containers or Cargo, upon disengaging of the locking device and unstowing of the Container or Cargo from its designated stowage position on board the Vessel until such Container or Cargo is placed and released in its designated stowage position on board the Vessel and correctly stowed with the locking device engaged or when the Container or Cargo is placed properly in a suitable stowage position below deck.

#### **15. CLAIMS AND COMPLAINTS**

15.1. CLAIMS FOR PROPERTY DAMAGE WILL BE CONSIDERED ONLY IF:

- 15.1.1. IN THE CASE OF DAMAGE TO A VESSEL AND/OR SHIPPING LINE EQUIPMENT NOTICE OF THE DAMAGE IS GIVEN TO KFTL BY THE SHIPPING LINE PRIOR TO THE VESSEL UN-BERTHING, OR SHIPPING LINE EQUIPMENT LEAVING THE TERMINAL (AS THE CASE MAY BE) AND A COPY OF THE NOTICE IS SIGNED FOR BY KFTL'S REPRESENTATIVE;
- 15.1.2. IN THE CASE OF DAMAGE TO A CONTAINER NOTICE OF THE DAMAGE IS GIVEN TO KFTL BY THE OWNER BEFORE THE CONTAINER LEAVES THE TERMINAL OR IN LOADED BELOW DECK ON A VESSEL; AND
- 15.1.3. THE CLAIM IS SUBMITTED TO THE DESIGNATED EMAIL ADDRESS OF KFTL WITHIN 30 DAYS OF THE EVENT THAT GAVE RISE TO THE CLAIM.

15.2. For the purposes of this clause 15 the designated email address of KFTL is [claims@kingstonfreeport.com](mailto:claims@kingstonfreeport.com). The designated email address may be changed by publication on KFTL's Website and the change shall be effective ten (10) days after the date of such publication.

**16. RULES AND REGULATIONS REGARDING, INTER ALIA, SAFETY AND SECURITY**

- 16.1. While at the Terminal the Owner its servants and/or agents will obey the rules and regulations issued by KFTL including safety and/or security instructions issued by KFTL and/or its agents and/or any Government Agency. Rules and regulations and safety and/or security instructions shall be deemed to have been issued once the Owner is notified of them either directly or through publication on KFTL's Website or the website of any Government Agency.
- 16.2. KFTL may, in its sole and unlimited discretion, determine the security level of the Terminal.
- 16.3. **KFTL SHALL HAVE NO LIABILITY TO THE SHIPPING LINE FOR THE PRESENCE OF ANY STOWAWAYS ON A VESSEL UNLESS THE SHIPPING LINE IS ABLE TO PROVE THAT THE STOWAWAY GAINED ACCESS TO THE VESSEL LANDSIDE WHILE THE VESSEL WAS BERTHED AT THE TERMINAL.**

**17. GENERAL LIEN WITH POWER OF SALE**

- 17.1. KFTL shall have both a general and a particular lien on all Containers, Goods, the Shipping Line's plant including Vessels and related documents in its possession in respect of all sums the Line owes to KFTL at any given time if KFTL gives the Shipping Line twenty-one (21) days prior notice in writing. Upon the expiration of this notice, KFTL may sell or dispose of all or part of such Cargo, the Shipping Line's plant, Vessel or documents, as the Shipping Line's agent and at the Shipping Line's risk and expense, by public auction or private treaty (at KFTL's sole discretion). KFTL will at its discretion apply the proceeds towards the cost and expense of the sale and the exercise of its lien, and towards the payment of the sums the Line owes KFTL.
- 17.2. If KFTL exercises any lien (whether under these Conditions of the Contract or otherwise) against any perishable Cargo and, in KFTL's sole discretion, it is impracticable to give the notice, because the condition and/or value of the Cargo will or may deteriorate by reason of delay, KFTL may (but is not obliged to) sell the Cargo without giving that notice.
- 17.3. KFTL shall pay the Shipping Line the balance (if any), which remains following the sale and exercise of such lien and the application of any proceeds towards payment of any sums the Shipping Line owes to the Operator.

**18. BILL OF LADING**

- 18.1. The Shipping Line shall stipulate in its Bill of Lading regarding conditions for carriage that KFTL, its employees, sub-contractors and agents shall have the benefit of all provisions in the Bill of Lading (including any liability caps or limitation periods) benefitting the Shipping Line regardless of whether KFTL is acting solely for the Shipping Line. KFTL hereby accepts such benefit and appoints the Shipping Line as KFTL's agent for the purpose of entering into the contracts of carriage evidenced by the Bill of Lading.

18.2. IF A BILL OF LADING DOES NOT SO PROVIDE AS STIPULATED IN CLAUSE 18.1 THE SHIPPING LINE SHALL, WITHOUT PREJUDICE TO ANY OTHER RIGHTS OF KFTL, INDEMNIFY KFTL ITS EMPLOYEES, SUB-CONTRACTORS AND/OR AGENTS AGAINST ALL PROCEEDINGS, CLAIMS AND EXPENSES (INCLUDING LEGAL COSTS ON A FULL INDEMNITY BASIS) ARISING OUT OF OR CONSEQUENT ON THE FAILURE OF SUCH BILL OF LADING TO SO PROVIDE.

**19. INSURANCE**

- 19.1. The Shipping Line shall ensure that all Vessels that call at the Terminal are covered by Protection and Indemnity (P&I) insurance with reputable P&I or London market insurers in respect of third-party liability risks (including Cargo damage, pollution and wreck removal). The levels of cover shall be in line with that which is normally taken out by a prudent operator of comparable Vessels in similar trades, and the Shipping Line shall provide KFTL with documentary evidence of such insurance cover upon request.
- 19.2. NO INSURANCE POLICIES OR THE LIMITS OF SUCH POLICIES SHALL BE CONSTRUED IN ANY WAY AS A LIMIT OF THE SHIPPING LINE'S LIABILITY PURSUANT TO THIS AGREEMENT OR OTHERWISE.

**20. LIABILITY AND INDEMNITY**

- 20.1. THE OWNER SHALL INDEMNIFY KFTL AGAINST ANY AND ALL LIABILITIES, COSTS, DAMAGES LOSSES, EXPENSES INCURRED, CLAIMS, FINES, PENALTIES, DEMANDS AND SUITS (INCLUDING LEGAL FEES AND EXPENSES AND INTEREST) AND ANY OTHER CONSEQUENCE ARISING OUT OF OR IN CONNECTION WITH THE FACT THAT A PERSON REFERRED TO IN CLAUSE 2.1.4 LACKS THE TITLE OR AUTHORITY REFERENCED IN THE SAID CLAUSE.
- 20.2. THE OWNER HEREBY AGREES TO INDEMNIFY KFTL ITS SERVANTS AND/OR AGENTS FROM AND AGAINST ANY AND ALL LIABILITIES, COSTS, DAMAGES LOSSES, EXPENSES INCURRED, CLAIMS, FINES, PENALTIES, DEMANDS AND SUITS (INCLUDING LEGAL FEES AND EXPENSES AND INTEREST) FOR DEATH OR PERSONAL INJURY OR DAMAGE TO PROPERTY THAT MAY BE SUFFERED BY/MADE AGAINST KFTL, ITS SERVANTS AND/OR AGENTS BY ANY PERSON AS A RESULT OF:
  - 20.2.1. THE SERVICES THE OWNER RECEIVES AT THE TERMINAL OTHER THAN DUE TO THE NEGLIGENCE OF KFTL;
  - 20.2.2. ANY BREACH OF THIS AGREEMENT BY THE OWNER;
  - 20.2.3. ANY FRAUD OR NEGLIGENCE OF ANY EMPLOYEE, AGENT OR SUBCONTRACTOR OF THE OWNER OR ANY EMPLOYEE OF ANY SUBCONTRACTOR OF THE OWNER;
  - 20.2.4. ANY FAILURE OF THE OWNER TO COMPLY WITH APPLICABLE LAW OR DIRECTIVES FROM A GOVERNMENT AGENCY OR KFTL;
  - 20.2.5. ANY THIRD PARTY CLAIM;

- 20.2.6. THE DETERIORATED CONDITION OF THE VESSEL/ SHIPPING LINE EQUIPMENT, CONTAINER AND/OR CARGO; AND/OR
- 20.2.7. ANY FAILURE BY ANY EMPLOYEE, SERVANT, AGENT OR SUB-CONTRACTOR OF THE OWNER TO OBTAIN THE REQUISITE AUTHORITY TO COMMUNICATE WITH KFTL OR TO PERFORM AND COMPLY WITH ANY OBLIGATION OF THE OWNER PURSUANT TO THIS AGREEMENT.
- 20.3. NOTWITHSTANDING CLAUSE 20.7 IN SO FAR AS IS LEGALLY PERMISSIBLE IN THE EVENT OF THE NEGLIGENCE OF KFTL RESULTING IN INJURY TO PERSON OR DAMAGE TO PROPERTY THE OWNER WILL NOT MAKE ANY CLAIM AGAINST KFTL FOR LESS THAN USD1,000.00 (ONE THOUSAND UNITED STATES DOLLARS) AND THE MAXIMUM LIABILITY OF KFTL SHALL BE LIMITED AS HEREUNDER STATED:
  - 20.3.1. IN THE CASE OF LOSS OR DAMAGE OF WHATEVER KIND TO PROPERTY (INCLUDING CARGO AND CONTAINERS), USD1,500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND UNITED STATES DOLLARS) PER OCCURRENCE, OR SERIES OF OCCURRENCES ARISING OUT OF ONE EVENT; AND
  - 20.3.2. IN THE CASE OF PERSONAL INJURY OR DEATH, USD100,000.00 (ONE HUNDRED THOUSAND UNITED STATES DOLLARS) PER PERSON PER INCIDENT.
- 20.4. FOR CLAIMS FOR REPAIRS OR REPLACEMENT THAT ARE GREATER THAN OR EQUAL TO USD4,000.00 (FOUR THOUSAND UNITED STATES DOLLARS) THE OWNER SHALL FIRST SUBMIT TO KFTL DETAILS OF THE COSTS TO BE INCURRED AND NECESSITY FOR SAME FAILING WHICH KFTL RESERVES THE RIGHT TO DENY PAYMENT.
- 20.5. WHERE DETAILS ARE SUBMITTED IN ACCORDANCE WITH SUB-CLAUSE 20.4 KFTL RESERVES THE RIGHT TO REASONABLY CONTEST LIABILITY FOR THE CLAIM AND/OR THE AMOUNT OF THE CLAIM.
- 20.6. IN NO EVENT WHERE KFTL IS LIABLE FOR THE CLAIM WILL KFTL BE OBLIGED TO PAY ANY AMOUNT ABOVE THE REASONABLE COST OF THE REPAIR AND THIS COST SHALL BE DETERMINED SOLELY BY KFTL.
- 20.7. KFTL SHALL HAVE NO LIABILITY TO THE SHIPPING LINE FOR DAMAGE TO THE VESSEL AND/OR SHIPPING LINE EQUIPMENT WHERE SUCH DAMAGE IS CAUSED OR CONTRIBUTED TO BY THE FACT THAT THE VESSEL AND/OR SHIPPING LINE EQUIPMENT WAS AT THE MATERIAL TIME NOT IN OPTIMAL CONDITION SO AS TO RENDER IT VULNERABLE TO DAMAGE DURING NORMAL STEVEDORING OPERATIONS.
- 20.8. SAVE AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT LEGALLY PERMISSIBLE KFTL'S MAXIMUM LIABILITY TO THE OWNER FOR THE BREACH OF AN EXPRESS TERM OF THIS AGREEMENT IS LIMITED TO A REFUND OF SUMS PAID BY THE OWNER FOR THE RELEVANT SERVICES OR A WAIVER OF THE APPLICABLE CHARGES, AS THE CASE MAY BE.
- 20.9. THE MAXIMUM LIABILITY OF KFTL UNDER THIS AGREEMENT, OTHER THAN WITH RESPECT TO CIRCUMSTANCES REFERRED TO IN CLAUSE 20.3 ABOVE OR IN CASE OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT RESULTING IN DEATH OR INJURY TO A PERSON

SHALL, WHERE LEGALLY PERMISSIBLE, BE LIMITED TO USD1,000,000.00 (ONE MILLION UNITED STATES DOLLARS).

- 20.10. THE OWNER SHALL FULLY INDEMNIFY KFTL FOR ANY DAMAGE TO THE TERMINAL OR ANY PROPERTY OR PERSON THEREON AS A RESULT OF THE OWNER'S USE THEREOF OR PRESENCE THEREAT. WITH REGARD TO DAMAGE TO THE TERMINAL OR PROPERTY THEREON KFTL RESERVES THE RIGHT TO REPAIR THE SAME OR CAUSE IT TO BE REPAIRED AND TO SEEK REIMBURSEMENT FROM THE OWNER.
- 20.11. IN NO EVENT WHATSOEVER WILL KFTL BE LIABLE TO THE OWNER FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES OR FOR LOSS OF BUSINESS, LOSS OF EARNINGS OR LOST PROFITS INCURRED OR SUFFERED BY THE OTHER PARTY, UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THIS AGREEMENT. THIS EXCLUSION PROHIBITS ANY CLAIM THE OWNER AGAINST KFTL BASED ON "CUT AND RUN" CAUSED OR ALLEGEDLY CAUSED BY KFTL.
- 20.12. KFTL MAY, WHERE CIRCUMSTANCES SO WARRANT IT, CLAIM AS AGAINST THE OWNER EXPECTATION LOSSES, RELIANCE LOSSES AND/OR WASTED EXPENDITURE.
- 20.13. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, BOTH KFTL AND THE OWNER SHALL, AT ALL TIMES, TAKE ALL COMMERCIALY REASONABLE STEPS TO MINIMISE AND MITIGATE ANY LOSS, DAMAGE AND/OR COSTS AND EXPENSES FOR WHICH THE RELEVANT PARTY IS ENTITLED TO BRING A CLAIM AGAINST THE OTHER PURSUANT TO THE AGREEMENT.
- 20.14. IF THE LIABILITY OF ONE PARTY INVOLVED BUT THAT LIABILITY IS CONTRIBUTORY ONLY AND OPERATES IN CONJUNCTION WITH A FAULT, NEGLIGENCE AND/OR DEFAULT ON THE PART OF THE OTHER PARTY, ITS SERVANTS, AGENTS OR SUB-CONTRACTORS OR SOME THIRD PARTY, THEN THE LIABILITY OF EITHER PARTY SHALL BE ONLY FOR THE PROPORTIONS OF LIABILITY WHICH ATTACHES TO SUCH PARTY, ITS SERVANTS, AGENTS OR SUB-CONTRACTORS.
- 20.15. EACH PARTY SHALL NOTIFY THE OTHER PARTY, WITHOUT UNDUE DELAY, UPON BECOMING AWARE OF ANY MATTER WHICH GIVES RISE TO OR MAY GIVE RISE TO A CLAIM FROM THEM UNDER THIS AGREEMENT, STATING IN REASONABLE DETAIL THE NATURE OF THE MATTER AND CLAIM, AND SO FAR AS PRACTICABLE, THE AMOUNT CLAIMED.
- 20.16. KFTL SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY LOSS, CLAIM AND/OR EXPENSE SUSTAINED OR INCURRED IN THE PROVISION OF THE SERVICES AND/OR THE PORT TERMINAL FACILITY TO THE EXTENT THAT SAME ARISES FROM:
  - 20.16.1. THE OWNER BREACHING ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT;
  - 20.16.2. OPERATIONS PERFORMED BY PERSONS WHO ARE NEITHER IN KFTL'S EMPLOYMENT, NOR CONTRACTED DIRECTLY OR INDIRECTLY BY KFTL FOR THE PROVISION OF THE SERVICES AND ANY ACTS OR OMISSIONS PERFORMED BY SUCH PERSONS;
  - 20.16.3. ANY LOSS ARISING FROM THE LACK OF AUTHORITY OF ANY EMPLOYEE, AGENT, SERVANT OR SUB-CONTRACTOR OF THE OWNER;

- 20.16.4. OPERATIONS INVOLVING THE USE OF ANY SHIPPING LINE EQUIPMENT PROVIDED BY THE SHIPPING LINE WHERE SUCH LOSS, CLAIM AND/OR EXPENSE ARISES AS A RESULT OF A DEFECT IN, OR THE MALFUNCTION SUCH SHIPPING LINE EQUIPMENT;
- 20.16.5. ANY LACK OF INFORMATION FROM THE OWNER REGARDING THE CARGO, VESSELS OR SHIPPING LINE EQUIPMENT OR ANY IMPROPER OR INCORRECT INFORMATION THE OWNER HAS SUPPLIED;
- 20.16.6. KFTL COMPLYING OR ATTEMPTING TO COMPLY WITH THE OWNER'S INSTRUCTIONS AND/OR KFTL OPERATING UNDER THE OWNER'S SUPERVISION OR CONTROL;
- 20.16.7. IMPROPER, INSUFFICIENT, INDISTINCT OR ERRONEOUS MARKING OF CARGO OR SHIPPING LINE EQUIPMENT BY THE OWNER;
- 20.16.8. THE INSECURE, FRAIL OR OTHERWISE INADEQUATE PACKAGING OF CARGO;
- 20.16.9. THE IMPROPER OR INADEQUATE MOORING OF VESSELS OR THE MOVEMENT OF VESSELS DURING THE CARGO HANDLING OPERATION;
- 20.16.10. DETERIORATION OF CARGO HELD IN THE OPEN;
- 20.16.11. THE HANDLING OF HAZARDOUS CARGO WHERE LOSS ARISES AS A RESULT OF THE HAZARDOUS PROPERTIES OF THE CARGO;
- 20.16.12. VERMIN, INSECTS, FUNGAL ATTACK, ROT OR CORROSION;
- 20.16.13. INHERENT VICE OF THE CARGO; AND/OR
- 20.16.14. FORCE MAJEURE.

20.17. THE PROVISIONS OF THIS CLAUSE 20 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT BY WHATEVER MEANS.

## **21. CLAIM NOTIFICATION AND TIME BAR**

- 21.1. Either Party shall notify the other without undue delay upon becoming aware of:
  - 21.1.1. any matter which gives, or may give, rise to a claim for loss or damage(s) under this Agreement; or
  - 21.1.2. of any event which customarily requires a survey of loss or damage.
- The notifying Party shall state in reasonable detail and with such information as available, the nature of the matter and claim, and so far as practicable, the amount claimed.
- 21.2. A Party shall be discharged from any liability and the other Party (the **Claiming Party**) shall save, protect, defend, indemnify and hold the former Party (the "**Indemnifying Party**") harmless of any liability in respect of loss of or damage to a Party's property (owned, leased or otherwise managed/operated), unless the Claiming Party has notified the other Party

within twelve (12) months of becoming aware of the event or occurrence giving rise to such a claim.

- 21.3. For claims or actions in indemnity by the Line against the Operator in respect of loss of or damage to Cargo, the Operator shall be discharged from any liability, unless such Line:
  - 21.3.1. within twelve (12) months of becoming aware of the claim or action against a Line notifies the Operator in writing of the claim or action against which such Line is seeking to be indemnified together with all details in the actual knowledge or possession of the Line at the time and becoming known to it at any time thereafter; and
  - 21.3.2. save where any mandatory law applies to the subject matter and which cannot be derogated from by agreement, any claim or action for indemnity by a Line against the Operator shall, unless an extension of time if first obtained or legal steps have been taken to protect time, be subject to a time bar of the earlier of:
    - 21.3.2.1. three (3) months counting from the date of final judgment or award in a claim or action brought by a Line's customer or any other person against the Line, or from the date that Line has settled any such claim or action, whichever is later, or
    - 21.3.2.2. twelve (12) months from the time that the concerned Cargo loaded (for on-carriage) onto the Container Vessel at the Container Terminal or the time of collection (if the Terminal Operator is the terminal of discharge) of the concerned Cargo from the Container Terminal.
- 21.4. Where the Indemnifying Party indemnity relates to a claim or action by any third party against the Claiming Party, upon written request of the Indemnifying Party, the Claiming Party shall permit the Indemnifying Party to participate in the defence of such third-party claim or action, provided always that it is reasonably possible and, in Claiming Party's reasonable opinion, it does not prejudice the Claiming Party and that all costs of defence are borne by the Indemnifying Party.

## **22. GOVERNING LAW AND DISPUTE RESOLUTION**

- 22.1. This Agreement shall be governed and construed pursuant to the laws of Jamaica.
- 22.2. Any dispute arising out of or in connection with this Agreement shall be settled on an amicable basis within thirty (30) days thereafter by mediation by a mediator chosen between the Parties. If no settlement can be reached between the Parties through mediation within thirty (30) days of being referred the dispute may be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by an arbitrator agreed by the Parties, or in the event the Parties are unable to agree, by three (3) arbitrators, one chosen by each of the Parties hereto, and the third by the two so chosen. The seat of arbitration shall be Kingston Jamaica and the language of arbitration shall be English. The dispute resolution process must be commenced within two years of the incident giving rise thereto failing which the relevant dispute will be deemed to have

expired PROVIDED HOWEVER THAT a Party shall not be obliged to first pursue mediation where it reasonably believes that urgent injunctive relief is required, that the other Party may steal a march upon it if it were notified of the dispute and/or if it requires the urgent arrest of a Vessel to protect its interests.

## **23. GENERAL PROVISIONS**

### **Force Majeure**

23.1. Neither of the Parties shall be considered to have breached the terms and conditions of this Agreement if the failure to fulfil its obligation or a delay in so doing is caused by Force Majeure. In the case of failure to fulfil its obligations because of Force Majeure circumstances, the Party under such conditions shall as soon as reasonably possible notify the other Party about the existence and effects of such circumstances and the relevant failure and both Parties shall take such action as is reasonably within their powers to remove or mitigate such circumstances or effects of Force Majeure.

### **Waivers**

23.2. To be effective all waivers of rights must be in writing, signed by the waiving Party and delivered to the other Party. The waiver of a right in one instance shall not amount to a waiver of the same, or any other right, in another instance unless this is expressly stated in the relevant notice of waiver.

### **Assignment**

23.3. The Owner shall not assign its rights pursuant to this Agreement without the prior written consent of KFTL AVE AND EXCEPT that KFTL.

### **Entire Agreement**

23.4. This Agreement contains the whole agreement between the Parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter of this Agreement.

### **Severance**

23.5. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, in whole or part, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### **Notices**

23.6. All notices required by this Agreement shall be in writing and shall, unless otherwise specified, be sent by hard copy as follows:

To KFTL

**Kingston Freeport Terminal Limited**

Berth 11, Port Bustamante

GPO Kingston

Attention: Chief Executive Officer

With copy to: Chief Operating Officer

Deemed delivery shall be determined as follows:

- By hand – the first Business Day following delivery;
- By independent private courier – at the time the courier company states that it was delivered;
- By prepaid registered mail sent within Jamaica – twenty-one days after it is sent.
- By email – where there is no notification of delivery failure on the next Business Day during Business Hours if sent after 4:00 p.m., in all other instances they will be deemed delivered one hour after sent.

#### Language

23.7. This Agreement is entered in the English language. Should a translation of the Agreement into any other language be made for any reason, all matters involving interpretation shall be governed by the English text. The day-to-day language of communication and document transfer between the parties shall be English.

#### Ethics and compliance

23.8. The Parties undertake to comply with all Applicable Laws, including those relating to anti-corruption, anti-bribery, Human rights, labour rights, competition matters, applicable customs regulations and Health, Safety and Environmental regulations. The Parties shall assure that all their owners, directors, officers, employees, agents, subcontractors and representatives (“*Representatives*”) shall likewise comply with such Applicable Laws.

#### Economic sanctions – Embargos

23.9. The Parties represent and warrant that they and their Representatives will comply with any and all applicable restrictions and/or prohibitions of commercial transactions under statute, regulation, rule or other such rulings published by a governmental entity, including not limited to the United States European Union, United Nations, United Kingdom and/or Jamaica. In the event of irreconcilable conflict the laws of Jamaica will prevail.

#### Data Privacy

23.10. Each Party undertakes to comply with its obligations under the Data Protection Act, 2020 and all related regulations (“Data Protection Laws”). Each Party shall promptly notify the other of any breach of any of its obligations under Data Protection Laws.

23.11. The Owner undertakes and warrants to KFTL that, to the extent it processes any personal data on behalf of KFTL, it shall act as KFTL’s data processor for the purposes of the Data Protection Laws and only on instructions from KFTL.

- 23.12. The Owner shall put in place and maintain appropriate technical and organizational security measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 23.13. The Parties shall prepare, apply for and maintain all governmental permits, licenses and authorizations necessary to comply with the Data Protection Act, 2020, including without limitation, the necessary governmental authorizations, rules, regulations, and requirements.

SCHEDULE 1 – DESCRIPTION OF SERVICES
**1. GENERAL DESCRIPTION OF SERVICES**

KFTL shall provide and/or perform the Services as detailed in this Schedule in compliance with the standards set forth herein and the terms and conditions of the Agreement.

**2. TERMINAL SERVICES**
**Storage**

2.1. KFTL will provide sufficient storage for import, export, Restow or Transshipment Containers and/or Cargo received during the receiving period or following the completion of stevedoring operations.

**Reefer Services**

2.2. KFTL shall provide storage and power for Reefer and ventilated Containers and Cargo and plug and unplug Reefer Containers to/from the electric power supply (including Genset units) as requested by the Shipping Line.

**Gate Services**

2.3. KFTL shall check for the presence of Container seals and will notify the Shipping Line of the absence of same.

2.4. KFTL shall check for the presence of IMO labels for dangerous Containers and remove invalid labels.

**3. DOCUMENTATION AND REPORTING SERVICES**

KFTL shall provide the following documentation to the Shipping Line and comply with the following reporting procedures for the duration of the Agreement:

**3.1. Status Reports**

KFTL will transmit regular reports of the status of Containers and Cargo movements into, out of and within the Terminal in compliance with EDIFACT standards. Data and reports to the Shipping Line issued by KFTL will be prepared in EDI modes, such as COR / COREOR / COARRI / CODECO / COPARN, etc., per the below table:

EDIFACT	X12 (US)	Description
OCR		Container Gate in and Gate out (when available)
COREOR	301/315	Container release order for depot (Export) / Terminal (Import)
COARRI	322	Container status of load/discharge, received from Terminal/ depot

EDIFACT	X12 (US)	Description
CODECO	322	Container status of Gate In/Gate Out, received from Terminal/depot.
COPARN		Arrival notification of Container, sent to Terminal / depot (COPARN DAO)
	204	Arrival notification of Container, sent to terminal (for rail)
COPRAR	309/310	Container load/discharge pre-order, sent to Terminal
	404	Copy of transport order sent to terminal to inform the arrival Container by rail.
BAPLIE		Bayplan / Stowage of Containers on board Vessels
MOVINS		Stowage instructions
TPFREP		Terminal Departure and Performance Report

### 3.2. During Stevedoring Operations

KFTL shall provide the Master of the Vessel (as well as Shipping Line's planners and Agent especially for below points a), e) and h)) with the following documentation upon arrival of the Vessel and throughout stevedoring operations:

- 3.2.1. Full stowage plan (soft copy BAPLIE);
- 3.2.2. Reefer Container manifests including slot positions and temperature / ventilation settings;
- 3.2.3. Hazardous Cargo manifests including slot positions and packing certificates;
- 3.2.4. OOG Container manifests including slot positions;
- 3.2.5. Work sequences;
- 3.2.6. Any specific documentation required on a case by case basis;
- 3.2.7. Scheduled departure time; and
- 3.2.8. Operator's progress reports at interval of four (4) hours during stevedoring operations, based upon which the scheduled departure time will be adjusted accordingly.

### 3.3. Upon Completion of Stevedoring Operations

KFTL shall provide the Master of the Vessel with the following documentation upon completion of the stevedoring operations:

- 3.3.1. Any of the above documentation that may have changed or otherwise been incomplete;
- 3.3.2. The final stowage plan and final documentation.

### 3.4. **Damage Reports**

KFTL shall promptly report any damage to Vessels, equipment, Containers or Cargo occurring during stevedoring operations or at any time on the Terminal including during gate operations via a damage report ("Damage Report") signed by both Parties.

## 4. **KFTL STEVEDORING SERVICES**

KFTL shall provide and/or perform the following Services:

### 4.1. **Vessel Planning**

Stowage planning based upon instructions from the Shipping Line, including but not limited to:

- 4.1.1. accessing the incoming electronic bay plan and retransmitting the completed electronic bay plan prior commencement of operations, during operations whenever necessary and immediately upon completion of operations (with no additional information or removal of information already contained in the file for other ports than present port of call); and
- 4.1.2. providing the Vessel with the final bay plan data in accordance with the existing standards.

### 4.2. **Loading and Discharging**

- 4.2.1. Loading and discharging Containers and Cargo to/from Vessel from/to the quay;
- 4.2.2. Provision of cranes, labor and handling equipment necessary for the loading and discharging operations;
- 4.2.3. Providing a bay plan and a working sequence for acceptance by the Master prior to the commencement of stevedoring operations, sent prior to arrival of the Vessel, whenever possible;
- 4.2.4. Re-stowing of Containers at the request of the Shipping Line;
- 4.2.5. Lashing and unlashing Containers and the Cargo on board the Vessel;
- 4.2.6. Opening and closing of twistlocks and attaching and removing twistlocks and lashing bars from Containers on board the Vessel or on the quay;
- 4.2.7. Discharging and loading of Vessel twistlock bins or racks and, upon request, separating damaged lashing equipment;
- 4.2.8. Discharging and loading bundles of flat-racks or bolsters as a bundle (i.e. Without separating elements of the bundle during loading or discharging operations);
- 4.2.9. Handling of lashing equipment in safe manner and as per the Master's instructions;
- 4.2.10. Opening and closing of hatch covers and movements from bay to wharf or vice versa;

- 4.2.11. Transport of Containers from the quay to the stacking area or vice versa including all lifts on and/or lifts off;
- 4.2.12. Checking and confirming Container numbers;
- 4.2.13. Checking and reporting the presence of Container seals and in case of no seal reporting this to the Shipping Line;
- 4.2.14. In regard to empty Containers checking and reporting the presence of IMO labels for Hazardous Cargo and removing same;
- 4.2.15. Reporting of Container movements on to/off of the Vessel in compliance with EDIFACT standards and communicated electronically after completion of operations;
- 4.2.16. Reporting of visual damage to Containers observed during unloading;
- 4.2.17. Handling Containers and Cargo that do not conform to ISO dimensional standards in a safe manner;
- 4.2.18. Insuring the accurate stowage location and position (including, but not limited to, doors facing aft for export containers for dry Containers unless otherwise instructed in writing by the Shipping Line or Master) whilst loading;
- 4.2.19. Prompt reporting of damage to Containers whilst loading or discharging and while the Containers are on the Terminal;
- 4.2.20. Discharging and/or loading operations will be done twenty-four (24) hours a day, seven (7) days a week. Unless otherwise agreed by the Parties operation starting times will be 0700, 1500 or 2300; and
- 4.2.21. Berthing the Vessel so as to support maximum productivity and the shortest port stay at the berth which is the most conducive to the efficient operations of the Vessel.

## **5. THE SHIPPING LINE'S OBLIGATIONS**

The Shipping Line shall use its best endeavor to comply with the following standards related to the Services provided hereunder:

### **5.1. With respect to the Berthing**

- 5.1.1. To provide weekly vessel schedules and confirmation of ETA 48 hrs before arrival and final confirmation 24hrs before berthing and timely notification of changes the ETA of a Vessel;
- 5.1.2. To provide KFTL with the general arrangement plans of all Vessels deployed in the Shipping Line's Vessel service calling the Terminal and any other pertinent information;
- 5.1.3. To berth the Vessel in a way so as to support maximum productivity; and

- 5.1.4. To vacate the berth at the agreed time unless KFTL has delayed the completion of the Vessel's stevedoring operations, or unless otherwise mutually agreed by the Parties.

## 5.2. With respect to the Stevedoring Operations

- 5.2.1. To submit to KFTL not less than 48 hours before the Vessel arrives one (1) complete set of Cargo documentation as is necessary for the safe, orderly and efficient discharge/loading of that the Vessel. Such documentation shall include, without limitation, bay plans, stowage plans, BAPLIES detailed descriptions of break-bulk, Hazardous Cargo and Reefer Containers and Cargo, together with such other documents as KFTL may have duly notified the Shipping Line in advance that it is reasonably required to provide. Notices for information submission will be adapted to situations whereby preceding port in a Vessel's schedule is less than 24 hours day of sailing;
- 5.2.2. To confirm to KFTL, ideally at least 48 hrs with minimum of 24 hrs prior to the ship berthing time , the Shipping Line's instructions in relation to the loading of Containers and Cargo (including a lashing plan);
- 5.2.3. To comply with all reasonable written requests by KFTL to ensure a safe working environment;
- 5.2.4. To inform KFTL of its requirements for Reefer Containers and Cargo; and
- 5.2.5. To clearly indicate to KFTL the type of Reefer Container, including 'super freezers', 'controlled atmosphere', 'cold treatment' or 'sensitive units', to indicate off power time limits.

SCHEDULE 2 – CHARGES

Charges for the Services provided by KFTL are quoted in United States Dollars and as set out below and are valid until otherwise amended:

**1. Stevedoring charge, from vessel to yard or yard to vessel**
**1.1. Domestic**

Standard GP Container	Full	Per Move	318.55
Standard GP Container	Empty	Per Move	318.55
Lashing import	Full	Per Move	53.55
Lashing export	Full	Per Move	15.30

**1.2. Transshipment**

20FT Standard GP Container	Full	Per Move	117.30
20FT Standard GP Container	Empty	Per Move	117.30
40FT Standard GP Container	Full	Per Move	117.30
40FT Standard GP Container	Empty	Per Move	117.30

**1.3. Restows**

On Board (single move)	F/E	Per Move	117.30
Via Quay (double move)	F/E	Per Move	117.30

**1.4. Extra Stevedoring charges for Special Units on items 1.1., 1.2. and 1.3.**

Domestic IMDG cargo			Per Move	477.83
Domestic OOG, with overhead spreader			Per Move	477.83
Transshipment, Restows (IMDG & OOG)			Per Move	175.95

**1.5. Other**

Hatch Covers		Per Lift	341.55
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**1.6. Breakbulk – provided upon request.**

## 2. Storage of containers

### 2.1. Storage of Containers

			US\$	Free Days
All	Empty	Per TEU/day	5.75	7
Transshipment	Full	Per TEU/day	6.90	7
Domestic/Consignee	Full	Per TEU/day	see <i>domestic rate sheet</i>	7

## 3. Reefers in the yard

Plug in & Plug Out (vessel & yard)	Per Container	72.45
Monitoring	Per Day/unit	28.75
Power Supply	Per day/unit	80.50
PTI	Per Container	80.50
Cleaning (Regular Wash)	Per Container	69.00
Cleaning (Chemical Wash)	Per Container	97.75

3.1. Repairs – provided upon request.

## 4. Other charges in the yard

		Standard	HC
Receive/Deliver to KWL	Per Move	115.00	
Equipment Hireage (Forklift/Truck)	Per Hour	86.25	
Extra Mounting/Grounding/ Positioning	Per Move	66.70	
Stripping or Stuffing – 20 ft	Per Container	450.00	515.00
Stripping or Stuffing – 40 ft	Per Container	750.00	865.00
Stripping or Stuffing – 45 ft	Per Container	820.00	940.00
Reconsolidation/Revanning – 20 ft	Per Container	750.00	875.00
Reconsolidation/Revanning – 40 ft	Per Container	1,285.00	1,475.00
Reconsolidation/Revanning – 45 ft	Per Container	1,500.00	1,725.00

## 5. Other charges to vessel

Mooring/Unmooring	Per Service	655.50
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Berthing Charges		Per day LOA	1.32
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## 6. Other charges

Change of Status in system		Per Container	59.67
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### Invoicing and Payment

- a. Invoices shall be issued by KFTL after closing each Vessel.
- b. Invoices will be paid by the Owner within 30 days of receipt of the invoice and are payable without deduction or setoff save as this Agreement may expressly provided to the contrary.
- c. Notwithstanding the foregoing, in case of dispute the Owner shall notify KFTL within 10 working days of the receipt of the invoice. In case of dispute, the Parties shall meet to discuss the disputed invoice in good faith. Upon agreement between the Parties, such agreement not to be unreasonably withheld or delayed, KFTL shall issue a new invoice which shall be payable within 30 days after the date of receipt of the new invoice. In the event that the Parties cannot resolve the dispute, then they must follow the dispute resolution procedure in the Agreement.
- d. **IF THE OWNER DOES NOT REMEDY THE NON-PAYMENT OF ANY UNDISPUTED INVOICE (OR OF THE UNDISPUTED PORTION THEREOF) WITHIN 15 DAYS FROM THE DATE OF RECEIPT OF SAID INVOICE, KFTL SHALL NOT BE BOUND BY ITS OBLIGATIONS DEFINED IN THIS AGREEMENT UNTIL PAYMENT THEREOF AND INTEREST SHALL ACCRUE ON THE OUTSTANDING AMOUNT AT THE RATE OF 3% PER ANNUM.**
- e. All Charges are reflected and payable in the currency indicated.