



McALLISTER TOWING OF CHARLESTON, INC.  
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**SCHEDULE OF RATES, TERMS AND CONDITIONS**

**Charleston, South Carolina**

**Effective Date: February 1, 2023**

Date .....

It is hereby agreed between Messrs: \_\_\_\_\_ (hereinafter, called "Owner") and McALLISTER TOWING OF CHARLESTON, INC, (and its successors) (hereinafter called "McAllister") that McAllister will furnish services for, and attend to, all the towage requirements at the Port of Charleston, South Carolina and other agreed locations for vessels owned, managed or controlled by Owner, and Owner agrees to place all of its towage requirements at the Port of Charleston, South Carolina and other agreed locations with McAllister in accordance with the then current "Schedule of Rates, Terms and Conditions" below, as may be amended from time to time. ("Agreement").

By signing this Agreement, any person or company who orders Tug Services represents and warrants that they are authorized to do so on behalf of the Owner of the Vessel to be assisted. Such person and/or company further agrees to indemnify and hold McAllister harmless from all damages and expenses that may be sustained or incurred by McAllister in the event and in consequence of such person or company not having such authority.

Owner agrees that during the term of this Agreement, McAllister shall have the right at any time, upon thirty (30) days advance notice to Owner, to increase its rates or modify its terms or conditions, but if Owner does not consent to such changes, they may cancel this Agreement upon thirty (30) days' written notice to McAllister; thereafter any such rejection shall be deemed waived.

This Agreement shall remain in effect from ..... and shall continue thereafter from year to year until cancelled by either party giving to the other party upon thirty (30) days' written notice prior to the annual expiration date.

McAllister Towing of Charleston, Inc.

By .....

ACCEPTED

.....

Signature of Owner, Charterer, or Agent

## **SCHEDULE OF RATES TERMS AND CONDITIONS**

**Effective: February 1, 2023**

UNLESS A VESSEL IS SUBJECT TO A TOWAGE AGREEMENT WITH MCALLISTER OR ITS AFFILIATES, ALL TUG SERVICES REQUESTED BY OR ON BEHALF OF A VESSEL ARE PERFORMED BY MCALLISTER OR ITS AFFILIATES SUBJECT TO ALL THE RATES, TERMS AND CONDITIONS SET FORTH IN THE THEN CURRENT "SCHEDULE OF RATES, TERMS AND CONDITIONS" IN EFFECT ON THE DATE AND PORT FROM WHICH A TUG IS DISPATCHED (WHICH SCHEDULE INCLUDES LIMITATIONS AND DISCLAIMERS WITH RESPECT TO PERFORMANCE OF SAID SERVICES AND OBLIGATIONS AND OPTIONS FOR OWNER). MCALLISTER REJECTS INCORPORATION BY REFERENCE OF OTHER PARTIES' ONLINE TERMS AND CONDITIONS. IF A VESSEL IS SUBJECT TO A TOWAGE AGREEMENT WITH MCALLISTER, THE PERTINENT SCHEDULE OF RATES, TERMS AND CONDITIONS SHALL APPLY WHERE THE AGREEMENT IS SILENT UNLESS OTHERWISE STATED IN THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO TERM OR CONDITION OF THE SCHEDULE MAY BE DELETED OR AMENDED UNLESS AGREED TO IN A WRITING SIGNED BY AN OFFICER OF MCALLISTER AND BY OWNER. CURRENT SCHEDULES OF RATES, TERMS AND CONDITIONS FOR EACH MCALLISTER PORT ARE PUBLISHED ON MCALLISTER'S WEBSITE AT [WWW.MCALLISTERTOWING.COM](http://WWW.MCALLISTERTOWING.COM) UNDER THE "PORTS AND RATES" TAB AND ARE ALSO AVAILABLE IN HARDCOPY UPON REQUEST.

For all services not specifically covered by this Schedule, such services shall be charged by mutual agreement of McAllister and Owners.

All Tug Services are furnished subject to the rates, terms and conditions set forth in this Contract. Receipt by or on behalf of Owner of any Tug Service described in this Contract shall constitute acceptance by Owner of all the terms and conditions set forth herein. McAllister reserves the right to decline any order for Tug Service hereunder.

**DEFINITIONS:** As used herein, the following terms shall mean:

**“Affiliate”:** An affiliate of, or person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

**“Deadship”:** A Vessel that at the commencement of any Tug Services requested from and provided by McAllister does not have use of, or which will not be using, its propelling power and/or steering.

**“Docking/Undocking”:** Tug Services rendered to assist a Vessel using its own propelling power from the stream to a dock or from a dock to the stream.

**“Escort/ Tethered Tugs”:** Services in which a Tug is requested or required to attend upon a Vessel during transit and provide services beyond those traditionally associated with Docking/Undocking of Vessels in the port. Tethering shall mean a Tug’s line is attached to the Vessel during this service.

**“Holidays”:** New Year’s Day, Martin Luther King Day, Presidents Day, Memorial Day, Easter Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day and any national holiday hereafter proclaimed by the President of the United States. In the event any of the above holidays fall on Saturday or Sunday, the following Monday will be observed as such holiday.

**“McAllister”:** McAllister Towing of Charleston, Inc., and its successors.

**“Overtime”:** The period before 0700 and after 1500 local time on weekdays and anytime on Saturdays, Sundays and holidays.

**“Owner”:** Collectively, the Vessel, owner, operator, charterer, agent, and manager of the Vessel receiving Tug Services from McAllister.

**“Rate(s)”** shall mean the charges or fees that will be imposed upon the Owner for receiving Tug Services. All Rates are furnished in United States Dollars

**“Schedule”:** The then current Schedule of Rates, Terms and Conditions for the applicable port associated with McAllister or its Affiliates that is in effect on the date and time that a Tug is dispatched to render Tug Services to a Vessel. A current copy of the Schedule may be found on McAllister’s webpage at [www.mcallistertowing.com](http://www.mcallistertowing.com) under the “Ports and Rates” tab and is available in hardcopy upon request.

**“Shifting”** When a Vessel shifts alongside dock only, one and one half (1 1/2) times the docking rate will be charged. Vessels shifting without power anywhere alongside dock only, will be double (two times) the docking charge.

**“Straight Time”** shall mean Tug Services provided on Monday through Friday from 0700 to 1500 local time. All Rates contained in this Schedule are calculated based on Straight Time. Tug Services performed outside Straight Time hours are subject to Overtime charges.

**“Tonnage”** shall mean the Vessel’s highest net registered tonnage as published in the then current edition of Lloyd’s Register of Ships.

**“Tug or Tugs”:** The Tugboats provided or arranged by McAllister to perform the requested Tug Services.

**“Tug Interests”:** McAllister, its owners, officers, directors, insurers, employees, any Tugs providing services pursuant to this Contract, their respective owners, affiliates, operators, charterers, managers, underwriters, masters and crews.

**“Tug Services”:** Any activities or services which a Tug provides to the Vessel, including but not limited to, docking, undocking, shifting, escorting, tethered escorting, hourly or standby services, line handling or any of the other such actions a Tug may be requested to provide.

**“Tug Station”:** The Tug’s customary berth at the McAllister facility or, if applicable, the berth or other place from which the Tug departed to perform the Tug Services and/or to which it proceeded following the provision of such Tug Services.

**“Vessel”:** Shall mean a Vessel that receives Tug Services.

**SCOPE:** The following Schedule applies to Vessels receiving Tug Services in the Port of Charleston, S.C. or other agreed location. Owners shall instruct Tugs to the designated location(s) for which Tug Services are requested and where the Tugs will lie always safely afloat while performing Tug Services.

**DISCOUNTS TO TARIFF:** McAllister reserves the right to apply a discount to its Rates. Unless otherwise agreed to in writing, any discounts shall only apply to Docking and Undocking Charges. Discounts shall not apply to any Tug Services: (1) provided to a Vessel on an hourly basis; (2) performed during Overtime (3) performed on Holidays; or (4) where a surcharge is applicable to the performance of specific Tug Services. Owners acknowledge and agree that discounts are a privilege and not a right and that McAllister has the right to cancel any discounts, at any time, and for any reason, including the Owners use of other operators for Tug Services in ports where McAllister or its Affiliates are located.

**DOCKING AND UNDOCKING CHARGES:** The following is a schedule of Rates by zone, per Tug, for each Docking or Undocking of a Vessel that is operating under its own propelling power from stream to a dock and from a dock to the stream. All Docking or Undocking Rates are calculated based on the highest **net registered tonnage (“NRT”)** of the Vessel receiving Tug Services, as published in the then current edition of “*Lloyd’s Register of Ships*” at the time the Tug Services are provided. Should the Vessel receiving Tug Services not have an assigned **NRT** in the *Lloyd’s Register of Ships*, Rates will be provided upon request.

**NOTIFICATION FOR TUG SERVICE:** For all Tug Services, Owners must provide McAllister at least four (4) hours definite notice to receive Tug Services.

**Docking and Undocking charges for all Vessels:** The charges for such services are found in the following schedule and includes up to two (2) tugs per docking or undocking. Minimum tonnage charge is 10,000 NRT.

<b>Zone:</b>	<b>Rate:</b>
Zone 1: Below Cooper River Bridge	\$0.62 per NRT
Zone 2: Above Cooper River Bridge to Minecraft Base and Wando Terminal	\$0.69 per NRT
Zone 3: From Minecraft Base to Army Trans. Corp. Depot	\$0.74 per NRT
Zone 4: From Army Trans. Corp. Depot to AMOCO Dock; and Above Wando Terminal to Cainhoy Bridge on Wando River	\$0.90 per NRT
Zone 5: On Cooper River above AMOCO	\$1.07 per NRT

**ADDITIONAL TUGS REQUIRED:** When more than two (2) Tugs are required to handle a Vessel in conditions such as weather, tidal conditions, congestion, difficult berths, congested berths, temporary mandated USCG regulations, request by Master, Pilot or Port Agent or any other factors required there will be an additional charge of fifty percent (50%) of the normal Docking or Undocking charge per additional Tug(s).

**VESSEL MANEUVERABILITY:** All Rates contained herein are calculated based on a Vessel operating under its own propelling power. Should a Vessel be receiving Tug Services while not under its own propelling power or lose her ability to maneuver (power or steering) while Tug Services are being rendered, the Vessel will incur an additional minimum charge of \$1,524.00 per Tug, per hour, with a minimum charge of two hours per Tug.

**TRACTOR TUG:** If a Tractor Tug is specifically requested or required to perform Tug Services, the Rate applicable to that Tug shall be increased an additional fifty percent (50%) above the base Rates contained in this Schedule.

**ESCORTING:** If a Tug is requested or required to Escort a Vessel, untethered, the Rate applicable to that Tug shall be \$1,524.00 per hour, per Tug with a minimum charge of two (2) hours per Tug, calculated from the time the Tug leaves the Tug Station until the Tug returns to the Tug Station, prorated to the nearest half (1/2) hour, after the first two (2) hours.

**TETHERED ESCORT:** If a Vessel requests a Tethered Escort, or one is required, the applicable Rate shall be \$2,706.00 per hour, per Tug for the time Tug Services are provided, including zone running time, calculated from the time the Tug leaves the Tug Station until the Tug returns to the Tug Station. This Tug Service will be subject to a two (2) hour minimum charge per Tug, prorated to the nearest half (1/2) hour after the first two hours.

**LINE HANDLING:** Should McAllister be requested or required to perform line handling services for the Vessel, Rates will be furnished upon request. Owners acknowledge and understand that McAllister is not obligated to perform line handling services, and all line handling services that are performed by McAllister are subject to the terms and conditions contained in this Schedule. Owner acknowledges and agrees that McAllister shall not be liable under any circumstances for the performance of any line handling services, and Owners shall defend, indemnify, and hold Tug Interests harmless, from and against, any and all loss or damage sustained by Owner, the Vessel assisted, Tug Interests or by any other vessel, property or person that results from the performance of line handling services.

**PEAK HOUR SERVICE:** Tug Services performed between the hours of 0400-0800 and 1600-2000 local time will be assessed a twenty five percent (25%) peak-hour surcharge in addition to all other Rates contained in this Schedule.

**SHIFTING:** When Tug Services are requested or required to shift a Vessel alongside a dock, a Rate of 1 ½ times the Docking Rates will be charged. Vessels shifting without power will be charged at a Rate twice the applicable Docking charge.

**HOURLY RATES:** The hourly Rate of \$1,524.00 per hour, per Tug with a minimum charge of three (3) hours per Tug for all Tug Services that are not defined as Docking or Undocking. Hourly Rates will be calculated from the time the Tug leaves the Tug Station and ends when the Tug returns to the Tug Station. Hourly Rates will be prorated to the nearest half (1/2) hour, after the first three (3) hours. Zone running time to and from the ordered work will apply based on the Zone Schedule and is not included in the three (3) hour minimum.

#### SCHEDULE OF RUNNING TIME

<b>ZONE 1..... .75 HOURS</b>	<b>ZONE 3..... .50 HOURS</b>	<b>ZONE 5.....1.5 HOURS</b>
<b>ZONE 2..... .75 HOURS</b>	<b>ZONE 4 .....1 HOUR</b>	

For all services or assistance not specifically covered by stated Rates in this Schedule, such special Rates or compensation shall be charged for as may be mutually agreed upon by the parties.

**OVERTIME & HOLIDAY:** A Rate of \$700.00 per hour, per Tug, will apply to any Tug Services performed before 0700 and after 1500 local time, and at any time Tug Services are performed on a Saturday, Sunday, or Holiday. All Overtime charges will have a one (1) hour minimum charge and will be prorated to the nearest half (1/2) hour after the first hour. This charge will be in addition to all other Rates contained herein. Overtime charges will commence when the Tug is ordered out from her Tug Station and ends when the Tug returns to her Tug Station.

**CANCELLATION/MODIFICATION:** When Tug Services are cancelled or modified after a Tug has been dispatched from its Tug Station, but before it commences performance of Tug Services, a charge of two-thirds (2/3) of the applicable Rate will apply. When an order is cancelled after a Tug reports to the location to perform Tug Services, the charge will be three-quarters (3/4) of the applicable Rate plus any detention incurred. There will be no charge if the orders are cancelled at least four (4) hours prior to the ordered time. Cancellation rates are subject to Peak Hour Service, Overtime and Holiday rate provisions.

**DETENTION:** For detention of a Tug caused by the Vessel not being ready or other conditions beyond McAllister's control, the time of detention will be charged at the rate of \$1,524.00 per hour, per Tug prorated to the nearest one

half (1/2) hour after the time the Tug reports for Tug Service (but not earlier than the time ordered), any fraction thereof to be charged at full one half (1/2) hour increments. Detention shall also be charged at \$1,524.00 per hour, per Tug prorated to the nearest one half (1/2) hour, any fraction thereof to be charged at full one half (1/2) hour increments, for any delay after movement of a Vessel has commenced, in proceeding toward berth or in berthing when such delay is caused by circumstances beyond the control of the Tugs. With respect to Docking and Undocking delays, the Detention charge shall be \$1,524.00 per hour, per Tug prorated to the nearest one half (1/2) hour, any fraction thereof to be charged at full one half (1/2) hour increments. Detention rates are subject to Overtime and Holiday rate provisions.

**OTHER SERVICES:** Prices for services rendered in connection with dead ship tow, salvage, ocean towing, Vessels aground or in distress, and when services are performed during heightened Coast Guard port conditions, will be separately quoted upon request. These services, or services not otherwise covered by this Agreement, may be governed by the terms and conditions of a BIMCO contract or such other contract as may be agreed by the parties. However, in all such cases, all terms and conditions contained in this Agreement shall apply to all matters and issues where any such BIMCO Contract or other contract is silent.

For all services rendered to dead ships, McAllister and Owner agree as follows: In consideration of the uncertain towage characteristics of a dead ship and of McAllister's agreement to furnish Tug Services to said dead ship hereunder, Owner agrees (i) to maintain hull and machinery insurance in an amount at least equal to the full value of the dead ship, (ii) to maintain full form protection and indemnity insurance in an amount not less than one hundred million dollars (\$100,000,000.00) and (iii) to name Tug Interests as named assureds or joint members (as applicable) with waiver of subrogation in favor of said assureds in all said policies. Owner shall be responsible to Tug Interests for any deductibles maintained with respect to said insurances. Owner further agrees to provide to McAllister proper evidence of such insurance prior to commencement of a dead ship move. For an absence of doubt, it is the intent of this paragraph to extend to Tug Interests, as primary cover for any liability arising out of performance of services hereunder to a dead ship for which Tug Interests may be liable, the enumerated insurances maintained by Owner on the Vessel assisted. The Limitation of Liability terms set forth herein shall apply to all Tug Services rendered to dead ships. Owner shall make all necessary arrangements for a master and, if required or deemed advisable, a duly licensed pilot to serve aboard the dead ship, and to direct the navigation of the flotilla. In the event that Owner utilizes a pilot, the pilot shall be deemed the borrowed servant of the dead ship assisted and her owner or operator for all purposes and in every respect, his services while so engaged being the work of the dead ship assisted, her owner and operator, and being subject to the exclusive supervision and control of the dead ship's master or Owner's other command personnel aboard. McAllister's Tugs will act in accordance with the direction of the pilot and master, as applicable.

**FORCE MAJEURE:** Tug Interests shall not be responsible or liable for any expense, loss, damage or claim whatsoever caused by or resulting from delays, failures, acts or omissions hereunder in the performance of Tug Services due to strikes, lockouts, labor disturbances, workforce unavailability, riots, fire, earthquakes, storms, lightning, epidemics, government-imposed measures responding to the outbreak of a communicable and/or infectious disease, war, disorders, civil commotions, acts of God, acts of the public enemy, acts of government or public authority, terrorists, port congestion (including terminal delays), shortage of Tugs, mechanical breakdowns, priorities in service, or any other cause whatsoever beyond their control.

Should the occurrence of a Force Majeure event (or other similar emergency that is beyond McAllister's control) cause a material increase in its operating costs, McAllister may issue a notice of an emergency surcharge. The emergency surcharge shall be in effect for all Tug Services provided after the date of such notice until McAllister issues a subsequent notice discontinuing such surcharge. The emergency surcharge shall be reasonably calculated to compensate McAllister for such increase in operating costs. If Owner or those acting on behalf of the Vessel object to an emergency surcharge, this Agreement will be suspended with respect to such Owner and such Vessel for the period during which the emergency surcharge is in effect, and this Agreement shall resume upon the discontinuance of the emergency surcharge.

**EMPLOYMENT OF OTHER TUGS:** All or part of any service performed hereunder may be subcontracted without notice to Owner. Any such subcontractor shall be considered an independent contractor and not an agent, servant or employee of McAllister. If at any time McAllister tugs are not conveniently available for the required services, McAllister will endeavor to designate or engage other tugs from other sources to provide Tug Service, but Tug Interests shall not be responsible or liable for damages if McAllister is unable, at any time, for any reason, to arrange such

services. Any non-McAllister tug designated or engaged by McAllister to perform services under this Agreement, and its owners, master and crews shall, while performing such services, have the benefit of all contract provisions herein or otherwise agreed between McAllister and Owner, and shall be considered third party beneficiaries of this Contract and all limitations of liability herein.

Further, in agreeing to endeavor to provide this substitute Tug Service, it is understood and agreed that Tug Interests do not expressly or implicitly warrant the seaworthiness, power, equipment, performance or competency of the Master, crew or any tugs used or engaged by Tug Interest in the performance of this Contract, but which are otherwise not owned, operated or controlled by Tug Interests. If for any reason, at any time, McAllister is unable or otherwise unwilling, in its sole discretion, to provide Tugs to serve Owner's Vessel, Owner is at liberty to engage tugs from any other owner or operator. In such circumstance, McAllister shall have no obligation to reimburse Owner for any price differential or any other cost incurred by Owner.

**CLAIM TIME LIMITS AND FORUM:**

- a. Owner shall notify McAllister of any claim, including damage to the Vessel assisted or a third-party, that allegedly occurred during performance of the requested Tug Services hereunder. Such notice shall be in writing and shall be delivered as soon as practicable, but not later than 48 hours following the alleged occurrence. McAllister shall be afforded an opportunity to inspect or survey any alleged damage before commencement of any repairs. Notwithstanding any statute or rule of law providing for a longer period within which to file suit, any action in any forum to recover damages or any other forms of redress from Tug Interests, or any of them, shall be commenced within one (1) year after the occurrence giving rise to the claim, failing which said claim shall be deemed waived.
- b. This Contract shall be governed by and construed in accordance with the General Maritime Laws of the United States and, to the extent not in conflict therewith, by the law of the State of New York, excluding its conflict of laws rules. The parties agree that any proceeding involving this Contract or the Tug Services performed hereunder shall be brought in the United States District Court for the Southern District of New York or, if said court shall not have jurisdiction thereof, then in a state court of competent jurisdiction sitting in New York County, New York.
- c. Tug Interests and Owner irrevocably waive their right to trial by jury with respect to any claim or dispute arising in whole or in part out of the terms and conditions of this Contract or the provision of Tug Services to a Vessel.

**LIMITATION OF LIABILITY:**

- a. The furnishing of any service or anything done in connection therewith, shall not be construed to be or give rise to a personal contract, and it is understood that Tug Interests shall have the benefit of all exemptions from, and limitations of, liability to which an owner of a vessel is entitled under the Limitation of Liability Statutes of the United States.
- b. MCALLISTER WARRANTS THE EXERCISE OF REASONABLE CARE IN THE PERFORMANCE OF TUG SERVICES BUT DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF WORKMANLIKE SERVICE.
- c. Unless entitled to immunity or to defenses to, exemptions from, and/or limitations of liability provided under this Contract or under any applicable law, rule or regulation that would reduce their liability to an amount less than that hereinafter set forth, Tug Interests shall be liable, only to the extent of their negligence, which negligence shall not be assumed but must be affirmatively proven, for claims, demands, causes of action, liabilities and costs (including any and all third-party claims) arising out of or in connection with any occurrence or series of occurrences related to the provision of Tug Services or line handling pursuant to this Contract, up to a maximum aggregate amount of two hundred fifty thousand dollars (U.S.\$250,000.00). For the avoidance of doubt, Tug Interests shall only be liable in the maximum aggregate amount of two hundred and fifty thousand dollars (U.S. \$250,000) for services rendered pursuant to this Agreement, regardless of the number of Tug's it uses for a particular service. Owner understands and agrees that Tug Services provided hereunder are rendered at all times under the supervision and command of Owner's servants, (including the Master of the Vessel being assisted and docking pilots), or of State pilots, none of whose actions or inactions may be imputed to Tug Interests. Owner further understands and agrees that the Rates charged by or on behalf of McAllister for Tug Services are predicated upon the limitations of liability and the indemnities set forth herein. Should Owner desire that Tug Interests retain liability in excess of two hundred fifty thousand dollars (U.S. \$250,000.00) it will notify McAllister in writing, whereupon McAllister will quote Rates for Tug Services hereunder predicated on the requested higher liability limits. Any such quote must be accepted by Owner in writing at least twenty-four (24) hours prior to commencement of Tug Services to the Vessel being assisted, failing which the Rates

and liability limitations otherwise provided herein shall apply. Nothing stated herein shall be construed to waive or limit the right of Tug Interests to assert any defenses to liability available to them or to avail themselves of any rights of limitation or exemption from liability under any applicable law, rule or regulation.

- d. Owner and any Vessel assisted hereunder assume all risk of, and shall defend, indemnify, and hold Tug Interests harmless, from and against, any and all loss or damage sustained by Owner, the Vessel assisted, Tug Interests or by any other vessel, property or person that results from the parting, heaving, pulling on as directed, or sudden movement of any hawser or other line, by whomsoever furnished or howsoever caused.
- e. Notwithstanding anything to the contrary in this Contract or elsewhere, Owner understands and agrees that the rates charged hereunder are also predicated on Owner's agreement that Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.
- f. Owner agrees to indemnify, defend and hold Tug Interests harmless from and against any and all claims, demands, causes of action, liabilities and costs (including attorney's fees, penalties, fines and third-party claims of whatever nature) in excess of the applicable limitation amounts set forth above that are attributable to the acts or omissions, whether or not negligent, of Tug Interests, or any of them, or to unseaworthiness of any tug and which arise out of or in connection with any occurrence or series of occurrences related to the provision of Tug Services pursuant to this Contract. The parties intend for this indemnity to apply in all instances including, without limitation, allisions, collisions, personal injury, fire, explosion, grounding, oil spills and third-party claims. Owner warrants that Owner possesses sufficient and adequate insurance on the Vessels assisted pursuant to this Contract, including hull and machinery, P&I, cargo and pollution coverage to comply with all applicable laws and to respond for any losses arising out of or connected in any way with the Tug Services requested, with all rights of subrogation for losses under said insurances waived as to Tug Interests, and with Tug Interests entitled to all benefits under said insurances of additional or coassureds, as applicable.
- g. Owner acknowledges McAllister's long term and substantial presence in the port and waives any right of demand that McAllister post security in connection with any claim by or on behalf of Owner of the Vessel being assisted for any expense, loss or damage claimed to have arisen, in whole or in part, as a result of any service rendered at the request of Owner.
- h. Nothing herein shall preclude Tug Interests from recovering from any responsible party for any damages sustained by any tugs, or their Masters or crews, providing services hereunder.

#### **PILOTAGE:**

- a. Tug Interests do not furnish pilots or pilotage to Vessels making use of or having available their own propelling power, so that whenever any licensed pilot, or a captain of any tug which is furnished to or is engaged in the services of assisting a Vessel making use of or having available her own propelling power at the commencement of such service, participates in directing the navigation of such Vessel, or in directing the assisting tugs, from onboard such Vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the Vessel assisted and her owner, operator and charterer and being subject to the exclusive supervision and control of the Vessel's personnel. Any such service performed by any such person is beyond the scope of his employment, if any, for Tug Interests and neither those furnishing the tugs or lending any such person, nor McAllister shall be liable for any act or omission of any such person. Owner agrees to indemnify, defend, and hold Tug Interests harmless for any and all damages which may arise out of any act or omission of any such person. For the purposes of this paragraph, Vessels making use of or having available their own propelling power shall be deemed to include tug/barge units and Vessels of any description having, at any time the service is commenced, another tug in assistance. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of McAllister.
- b. In consideration of McAllister transporting a docking and/or state pilot without charge to and/or from the Vessel being assisted hereunder, Owner agrees that it shall indemnify, defend and hold harmless Tug Interests from and against all claims, demands, causes of action, liabilities and costs (including attorney's fees) incurred in connection with or arising out of any claim by or on behalf of a pilot for personal injury or death sustained while being transported by McAllister to or from the Vessel being assisted, excepting only any injury sustained by said pilot to the extent attributable to the gross or willful negligence of McAllister. As used herein, the term "being transported by McAllister"



shall include, without limitation, all time when the pilot is (i) present on McAllister shoreside premises enroute to or from the Vessel being assisted, and (ii) boarding or disembarking from a tug or other vessel supplied by or on behalf of Tug Interests. As used herein the term "pilot" shall also include any assistant pilot, trainee or other person who may accompany the pilot in any capacity.

**TAXES:** Any transportation, use, sales or any similar federal, state or local taxes for fees levied with respect to the provision of Tug Services hereunder shall be paid by Owner.

**FUEL SURCHARGE:** All rates published in this Contract are subject to the prevailing fuel surcharge, which is available upon request and may change at any time without prior notice.

**CHANGE IN CONDITIONS:** Should the U.S Coast Guard or any other U.S., state or government agency, port authority, terminal or association (including any pilot or pilot association), or any designee of any of the foregoing, issue any regulation or requirement that obligates McAllister to make capital improvements to the tugs, to provide tugs with higher horsepower or different operational capabilities or that obligates McAllister to operate the tugs in a different manner or with a different crew complement that increases its operating costs, McAllister shall have the right to propose amendments to the rates, terms, and conditions set forth in this Schedule in order to reflect the new requirements and, as applicable, mitigate the costs thereof. If Owner or those acting on behalf of the Vessel object to any said amendments the implementation thereof shall be stayed for a period of thirty (30) days and the parties shall negotiate in good faith to achieve a mutually satisfactory outcome. If the parties are unable to reach agreement within said thirty (30) day period, the amendments, as proposed by McAllister, shall come into effect and the objecting party may terminate its obligations to McAllister with respect to future Tug Services.

**CONTRACT TERMINATION:** If at any time during the term hereof, McAllister reasonably concludes that the solvency or financial condition of Owner is threatened it may, in its sole discretion, cancel this Contract, such cancellation to take effect immediately upon receipt by Owner of email or other written notification thereof. If, subsequent to cancelation, Owner provides to McAllister evidence concerning its ability to meet their current and future financial obligations, McAllister may, in its sole discretion, elect to reinstate this Contract effective upon receipt by Owner of email or other written notification thereof.

**PAYMENT TERMS:** Net 30 days. In the event Owner fails to make payment when due or fails to pay entire balance due under this Contract or invoice, Owner will be considered in default and will be responsible for all cost of collection including reasonable attorney's fees and court costs. In addition, Owner agrees to pay 1.5 % interest per month on all outstanding balances. Payments received from or on behalf of Owner shall be applied as follows: FIRST to satisfy all fees, costs (including attorney's fees) and interest due and owing on any invoice rendered to Owner commencing with the oldest such invoice and then to each subsequent such invoice and SECOND to satisfy all tug service charges arising hereunder commencing with the oldest open invoice and then to each subsequent invoice. Notwithstanding anything contained herein, in providing services to the assisted Vessel, McAllister is relying upon the credit of the Vessel, and maintains its right to assert a lien against said Vessel for any amounts due for the services rendered, including those referenced herein.

**EQUAL OPPORTUNITY EMPLOYER:** McAllister hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

**SEVERABILITY & ENFORCEABILITY:** If any provision of this Contract is found void or unenforceable, the remaining terms and conditions shall remain in full force and effect.

**EFFECTIVE DATE:** The above rates, terms and conditions supersede all previously published Contracts and are effective from February 1, 2023.