



# McALLISTER TOWING OF PHILADELPHIA, INC.

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## PHILADELPHIA/DELAWARE RIVER TOWING CONTRACT

Date .....

It is hereby agreed between Messrs: \_\_\_\_\_ (hereinafter, called "Owner") and McALLISTER TOWING OF PHILADELPHIA, INC. (and its successors) (hereinafter "McAllister") that McAllister will furnish Tugs for and attend to all the towage requirements at the Port of Philadelphia (including ports or places of call on the Delaware River and its tributaries) and other agreed locations of Vessels owned, managed or controlled by Owner, and Owner agrees to place all of its towage requirements at the Port of Philadelphia (including ports or places of call on the Delaware River and its tributaries) 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.

Owner agrees that during the term of this Contract, McAllister may issue written notice of an adjustment to the rates, terms and conditions applicable to services provided hereunder. It is understood and agreed that said notice of adjustment shall be an agreed amendment to this Contract, without need for additional signatures, unless McAllister receives written notice of rejection of said adjustment at least thirty (30) days before said adjustment is to become effective

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

McALLISTER TOWING OF PHILADELPHIA, LLC

By .....

**EFFECTIVE AUGUST 15, 2020**

ACCEPTED

.....

Authorized Signature

UNLESS A VESSEL IS SUBJECT TO A TOWAGE AGREEMENT WITH MCALLISTER, ALL TUG SERVICES REQUESTED BY OR ON BEHALF OF A VESSEL ARE PERFORMED BY MCALLISTER SUBJECT TO ALL THE RATES, TERMS AND CONDITIONS SET FORTH IN THE "SCHEDULE OF RATES, TERMS AND CONDITIONS" IN EFFECT ON THE DATE AND PORT FROM WHICH THE SERVICES ARE PROVIDED (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 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. THE SCHEDULE OF RATES, TERMS AND CONDITIONS CURRENTLY IN EFFECT FOR EACH PORT SERVICED BY MCALLISTER IS PUBLISHED ON MCALLISTER'S WEBSITE AT [WWW.MCALLISTERTOWING.COM](http://WWW.MCALLISTERTOWING.COM) AND IS AVAILABLE UPON REQUEST.

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

**“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”:** Tug 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.

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

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

**“Schedule”:** The Schedule of Rates, Terms and Conditions for the applicable port that is in effect on the date that Tug Services are rendered to a Vessel. A current copy of the Schedule may be found on McAllister’s webpage at [www.mcallistertowing.com](http://www.mcallistertowing.com).

**“Tonnage Charge”:** Additional charge calculated on the Net Registered Ton (NRT) of the Vessel.

**“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 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.

**“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.

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

RATES ARE IN U.S. DOLLARS, BASED ON THE HIGHEST NET REGISTERED TONNAGE (“NRT”) AS PUBLISHED IN THE THEN EDITION OF “LLOYD’S REGISTER OF SHIPPING” THAT IS CURRENT ON THE DATE THAT SERVICE IS RENDERED HEREUNDER. SHOULD THE VESSEL TYPE NOT HAVE AN ASSIGNED NRT, RATES WILL BE PROVIDED UPON REQUEST.

**DOCKING AND UNDOCKING CHARGES:** The following schedule of rates, terms and conditions applies for each docking or each undocking of a Vessel using its own propelling power from the stream to a dock and from a dock to the stream. The charges for such services are found in the following schedule.

**NOTIFICATION FOR TUG SERVICE:** Four (4) hours of definite notice is required.

<b>RATES PER TUG</b>	
<b>ZONE</b>	<b>EACH TUG</b>
(1) Delair R/R Bridge to Gloucester Point . . . . .	\$1,158.00
(2) Eagle Point to Thompson Point . . . . .	\$1,787.00
(3) North of Girard Point to Point Breeze, Chester, PA to Claymont, DE . . . . .	\$2,265.00
(4) Wilmington, DE, Deepwater Point, NJ . . . . .	\$2,894.00
(5) North of Delair R/R Bridge to Burlington, NJ . . . . .	\$3,409.00
(6) North of Burlington, NJ to Morrisville, PA . . . . .	\$3,865.00
(7) Delaware City, DE . . . . .	\$3,944.00

**TONNAGE CHARGE:** In addition to the rates per Zone set forth above, add \$.21 per net registered ton of the Vessel assisted. The net tonnage used will be the Vessel’s highest Net Registered Tonnage as published in the current edition of Lloyd’s Register of Shipping at the time of service.

Contracted discounts only apply to Docking/Undocking and Tonnage Charge. Tug Services provided to a Vessel on hourly basis are not subject to a discount.

**RATES FOR WORKING BY THE HOUR:** For the following additional services not otherwise covered herein, the rate shall be \$1,223.00 per hour for each Tug, and will include running time of Tug from and to Tug station at Philadelphia when applicable. Hourly charges shall be prorated to the nearest (1/2) half hour.

- a. For assisting a Vessel from or to any anchorage.
- b. For the use of Tugs holding a Vessel for more than one-half hour after the Vessel is alongside the berth.
- c. For any undue delay after movement of Vessel has commenced, when the cause of such delay is beyond the control of the Tugs.
- d. For transporting a Vessel without power between points outlined in the zones set forth above. This is in addition to the charges for the undocking and/or the docking.
- e. For attendance to a Vessel.
- f. For shifting small craft such as lighters, scows, barges, etc.
- g. For tug services in the Delaware River and Bay South of Reedy Point, or in the Chesapeake and Delaware Canal.

**SCHEDULE OF RUNNING TIME**

<b>Zone 1.....1 Hour</b>	<b>Zone 3 .....2 Hours</b>	<b>Zone 5 .....3.5 Hours</b>
<b>Zone 2 .....0.5 Hours</b>	<b>Zone 4 .....3 Hours</b>	<b>Zone 6 .....4 Hours</b>
		<b>Zone 7 .....4 Hours</b>

**TRACTOR TUG:** If a tractor Tug is specifically requested or required, the rate applicable to that Tug shall be increased an additional 50% of the above schedule of rates and/or any applicable hourly rates.

**ESCORTING:** If a Tug is specifically requested or required to escort a Vessel, the rate applicable to that Tug shall be \$1,223.00 per hour per Tug with a minimum charge of two (2) hours per Tug, calculated from the time Tug leaves station until it returns to station, prorated to the nearest half (1/2) hour after the first two hours.

**TETHERED ESCORT:** If a Vessel requires a tethered escort, the applicable rate to that Tug shall be \$1,956.00 per hour per Tug with a two (2) hour minimum, prorated to the nearest half (1/2) hour after the first two hours.

**ICE CONDITIONS:** When a Tug is operating in ice conditions, whether the Vessel is docking, undocking, shifting or transporting a Vessel, shifting barges, scows or lighters, the surcharge will be an additional 50% of the applicable charges shown on this Contract.

When it is necessary for a Tug to break ice prior to docking or sailing a Vessel or to clear an ice slip, for any reasons, the surcharge will be an additional 50% of the applicable hourly rate with a two (2) hour minimum, prorated to the nearest half (1/2) hour. No running time will be charged if the Tug is used in the docking or sailing operation.

**CANCELLED ORDERS:** When a Tug is ordered and then cancelled, a charge of two-thirds (2/3) of the applicable rate will be made. When an order is cancelled after any Tug reports to the location ordered, 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.

**DETENTION:** For detention of a Tug caused by the Vessel not being ready or other conditions beyond our control, the time of the detention will be charged at three-quarters (3/4) of the applicable rate, prorated to the next quarter-hour. Detention shall also be charged for any undue 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.

**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 Contract, 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 the Contract shall apply to all matters and issues where any such BIMCO Contract or other contract is silent.

**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 shall be collectively referred to herein as "Tug Interests."

**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, storm, lightning, epidemics, government-imposed measures responding to the outbreak of a communicable and/or infectious disease, war, disorders, acts of God, acts of the public enemy, acts of government or public authority, terrorists, port congestion, shortage of Tugs, mechanical breakdowns, priorities in service, or any other cause whatsoever beyond their control.

**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 Tug Services, McAllister will endeavor to designate or engage other Tugs from other sources to provide some or all of the 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 Tug Services. Any non-McAllister Tug designated or engaged by McAllister to perform Tug Services under this Contract, and said Tug's owners, master and crews shall have, while performing such Tug Services, the benefit of all the terms and conditions contained 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 McAllister to supply the Tug Services requested by Owner. 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:**

- a. Owner shall notify McAllister of any claim, including damage to a Vessel, 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 Maritime Law of the United States and, to the extent not in conflict therewith, by the laws 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 to give rise to a personal contract, and 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. With respect to Vessels that are not owned by the person or company ordering the Tug Service, it is understood and agreed that such person or company warrants that it has authority to bind the Vessel Owners to all the provisions of the preceding paragraph, and agrees to indemnify and hold Tug Interests harmless from all damages and expenses that may be sustained or incurred in the event and in consequence of such person or company not having such authority.
- c. 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 WORK-MANLIKE SERVICE.
- d. Unless entitled to immunity or to defenses to, exemptions from, and/or limitations of liability provided herein 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 shall be proven affirmatively, 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 requested by Owner, up to a maximum aggregate amount of two hundred fifty thousand dollars (U.S.\$250,000.00). 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 the 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.
- e. Owner and any Vessel assisted hereunder assume all risk of, and shall defend and indemnify Tug Interests 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.

- f. Notwithstanding anything to the contrary in this Contract or elsewhere, the rates charged hereunder are also predicated on the fact that Tug Interests shall have no liability for any consequential, punitive, exemplary or special damages of any kind howsoever arising.
- g. 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, including Vessel 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 a named assured or joint member, as applicable.
- h. 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.
- i. 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 Tug Services hereunder.

**PILOTAGE:**

- a. Tug Interests do not furnish pilots or pilotage, so that whenever any licensed pilot, or a captain of any Tug which is furnished to or is engaged in the service of assisting a Vessel, 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 or operator for all purposes and in every respect, his services while so engaged being the work of the Vessel assisted and her Owner or operator 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 Tug Interests shall not be liable for any act or omission of any such person. 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 any and 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.

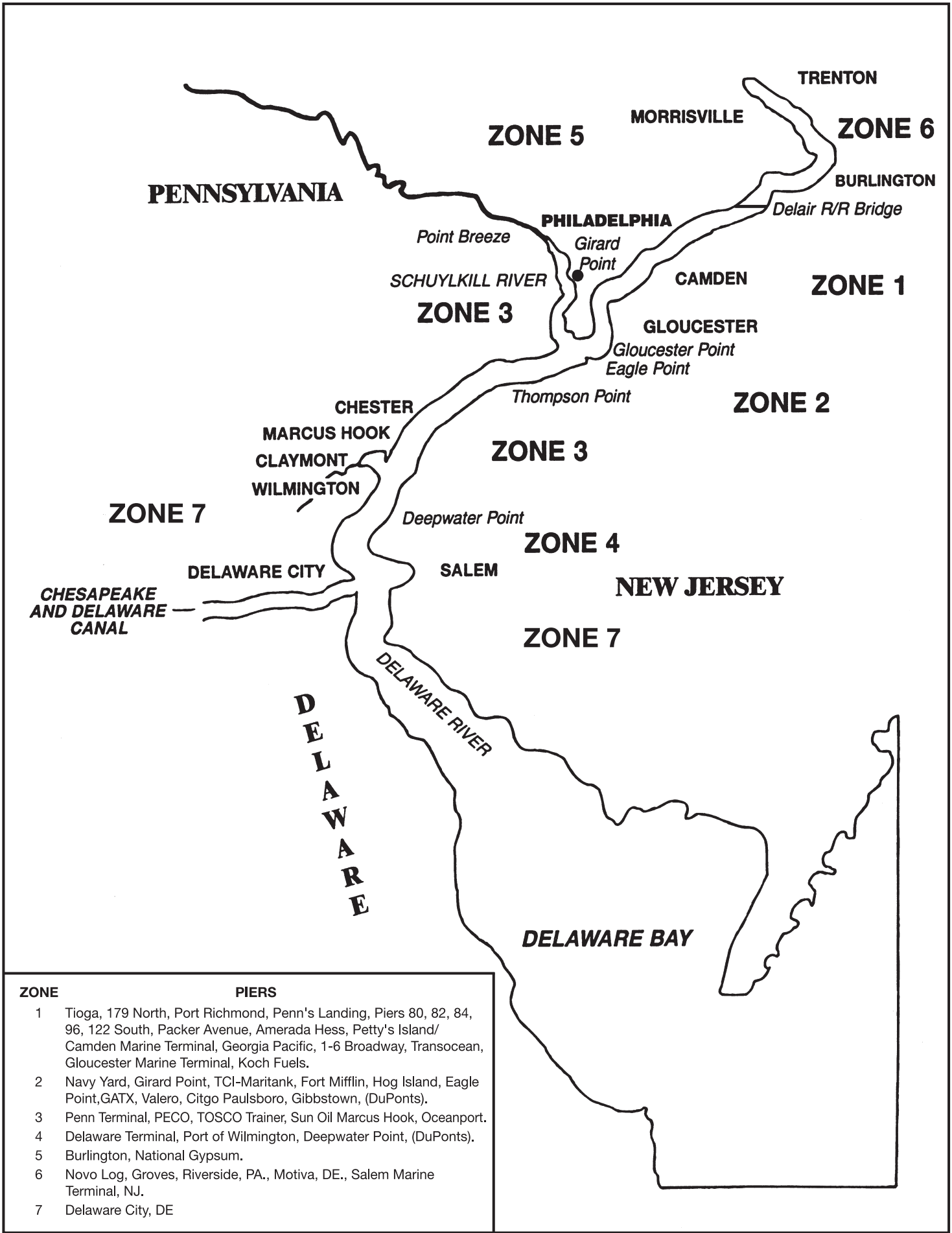
**FUEL SURCHARGE:** All rates published in this Contract are subject to prevailing fuel surcharges, which are available upon request and may change at any time without prior notice.

**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 cancellation, 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 that full payment is not made when due, McAllister shall be entitled to recover all costs of collection including reasonable attorney's fees and court costs, and 1.5 % interest per month on all outstanding balances. Payments received by 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 issued 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 Tug Services rendered, including those referenced above. McAllister hereby certifies it is an Affirmative Action Equal Opportunity Employer and complies with the requirements of the Fair Labor Standards Act.

**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 August 15, 2020.



ZONE	PIERS
1	Tioga, 179 North, Port Richmond, Penn's Landing, Piers 80, 82, 84, 96, 122 South, Packer Avenue, Amerada Hess, Petty's Island/ Camden Marine Terminal, Georgia Pacific, 1-6 Broadway, Transocean, Gloucester Marine Terminal, Koch Fuels.
2	Navy Yard, Girard Point, TCI-Maritank, Fort Mifflin, Hog Island, Eagle Point, GATX, Valero, Citgo Paulsboro, Gibbstown, (DuPonts).
3	Penn Terminal, PECO, TOSCO Trainer, Sun Oil Marcus Hook, Oceanport.
4	Delaware Terminal, Port of Wilmington, Deepwater Point, (DuPonts).
5	Burlington, National Gypsum.
6	Novo Log, Groves, Riverside, PA., Motiva, DE., Salem Marine Terminal, NJ.
7	Delaware City, DE