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FEDERAL MARITIME COMMISSION

**HOUSTON TERMINAL LLC
COOPERATIVE WORKING AGREEMENT**

(FMC No. 201188)

A Cooperative Working Agreement



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ARTICLE 1. Purpose of the Agreement.

Ceres Gulf, Inc. ("Ceres") and Container Marine Terminals LLC ("CMT"), an affiliate of Mediterranean Shipping Company, S.A. ("MSC"), have formed Houston Terminal LLC ("HT"), a Delaware limited liability company, to operate a marine terminal and provide container stevedoring, terminal and related services in the Port of Houston, Texas. The purpose of this agreement is to set forth the terms and conditions on which HT shall operate, as well as agreements of the parties on services to be provided to and by HT in this endeavor by and to the other parties to this Agreement.

ARTICLE 2. Parties to the Agreement.¹

The parties to this Agreement ("Parties") are as follows:

Ceres Gulf, Inc.
6021 Fairmont Parkway
Pasadena, TX 77505

Container Marine Terminals LLC
420 Fifth Avenue, 8th Floor
New York, NY 10018-2702

Houston Terminal LLC
6021 Fairmont Parkway
Pasadena, TX 77505

Mediterranean Shipping Company, S.A.
40, Avenue Eugene Pittard
1206 Geneva
Switzerland

Additional parties may be added to this Agreement by unanimous vote of all current Parties. Any new membership will be reflected in an amendment to this Agreement filed with the Federal Maritime Commission, and the membership of the new party shall not

¹ The terms of this Agreement and the filing of it with the Federal Maritime Commission ("FMC") do not and are not intended to bring within the scope of the Shipping Act of 1984, as amended (including the antitrust exemption conferred by the Act), or the jurisdiction of the FMC, parties that are not marine terminal operators or ocean common carriers as defined under the Act.

become effective unless and until said amendment becomes effective under 46 U.S.C.

§ 40301 *et seq.*

ARTICLE 3. Geographic Scope of the Agreement.

The geographic scope of the Agreement applies to activities at or related to terminal facilities at the Port of Houston, Texas.

ARTICLE 4. Overview of Agreement Authority

4.1 HT shall operate as a Marine Terminal Operator defined in 46 CFR 535.104(q). HT's organization and procedures are determined by HT's formational documents, as agreed, amended and supplemented by the Parties. The HT Members are Ceres and CMT.

4.2 HT shall conduct container stevedoring, terminal, container freight station and equipment maintenance and repair operations, and activities incidental thereto, at Houston, Texas. HT may discuss, agree and take any actions in furtherance of its stevedoring, terminal, container freight station and equipment and maintenance operations, and activities incidental thereto, including but not limited to the following:

- (a) Establish rates, charges and competitive practices.
- (b) Publish marine terminal schedules.
- (c) Negotiate and enter into agreements concerning marine terminal facilities and/or services, marine terminal conference agreements and/or agreements to provide stevedoring, maintenance and repair and other related services, subject to any applicable governmental filing requirements.
- (d) Take measures necessary or appropriate to comply with applicable governmental requirements, including with respect to terminal security;

(e) Either directly or through subcontractors hire labor, including union labor, for its operations;

(f) Either directly or through subcontractors, own and/or lease and operate cranes, lift machines, trucks and other equipment and gear incident to HT's purposes;

(g) Either directly or through subcontractors, operate, pursuant to lease, sublease, assignment, subassignment, purchase or acquisition, terminal facilities and operations connected with such facilities at the Port of Houston.

(h) Enter into agreements in its own name to obtain services and materials required for such operations. Such services and materials may include:

- (i) payroll, coordination of external audits, billing, and accounts payable;
- (ii) tax services, such as the preparation and filing of, and assistance with respect to, tax returns and reports to the Internal Revenue Service;
- (iii) legal services; insurance services, including assistance in designing, obtaining and negotiating insurance policies;
- (iv) property management services, including the administration of leasehold and/or ownership interests in land and equipment;
- (v) human resources services;
- (vi) services related to public affairs, including contacts with news and trade publications media and including crises management;

- (vii) marketing, advertising, and public relations services, such as developing a customer service program, and/or pursuing third party opportunities;
- (viii) general services with respect to government relations;
- (ix) terminal design services, including mechanical/electrical and industrial engineering;
- (x) vessel planning services.

(i) Engage in such other activities as are customary for a marine terminal and/or stevedoring operation.

(j) Perform all functions necessary to operate a Delaware limited liability company, including but not limited to maintenance of company books and records, preparation of financial statements, filing of tax returns and other tax information as required, establishment of bank accounts and investments, maintenance of offices and hiring and management of personnel, indemnification of managers and officers, and maintenance of insurance.

4.3 The Parties are authorized to consult, exchange information, discuss, and make and implement agreements regarding the subjects of this Article 4. Such agreements shall include, *inter alia*:

(a) Agreement for Ceres to provide and/or perform, for the benefit of HT, information technology services, accounting services, administrative services and operational functions.

(b) Agreement for Ceres to provide for the benefit of HT union labor subject to the Deepsea and Warehouse Longshore Agreement, on terms that provide that HT will not contract with any third party, other than Ceres, to provide union labor for HT's

operations; provided, however, nothing contained in this Agreement shall preclude HT from directly contracting with the ILA for its own labor.

(c) Agreement for Ceres to lease to HT stevedoring and terminal equipment necessary for HT's operations.

ARTICLE 5. Performance of Terminal and Stevedoring Activities

(a) The Parties agree that during the term of existence of HT, MSC and its affiliates will utilize HT to provide all stevedoring and terminal services required by MSC and its affiliates at the Port of Houston.

(b) The Parties agree that HT will not, directly or indirectly, in competition with Ceres solicit or provide any services to the following customers of Ceres at the Port of Houston: Grand Alliance – Hapag Lloyd, NYK, OOCL; Zim Container Line; Atlantic Container Line; Emirates Line; Hamburg Sud Line.

(c) Except as provided in Article 5(a) and 5(b), the Parties agree that neither this agreement nor any activity undertaken pursuant hereto shall (i) prevent any member or manager of HT or its affiliates, acting on their own behalf, from engaging in whatever activities they choose, whether the same are competitive with HT or otherwise, and any such activities may be undertaken without having or incurring any obligation to offer any interest in such activities to HT or any other member or manager, or (ii) require any member or manager to permit HT or other member or manager or its affiliates to participate in any such activities.

ARTICLE 6. Delegations of Authority.

(a) The following persons shall have authority on behalf of a Party to sign and file this Agreement, any subsequent modifications thereto, and any supporting information with the Federal Maritime Commission ("FMC") or any other governmental

entities with jurisdiction over this Agreement and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

1. A designated senior executive of each Party; or
2. Legal counsel for each Party or for the Agreement.

(b) This Agreement and any subsequent modification hereto may be executed in writing by separate counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 7. Effective Date, Term and Termination

(a) The Agreement shall become effective on the date it becomes effective under 46 USC § 40304.

(b) The Agreement shall continue in effect indefinitely unless otherwise terminated by agreement of all Parties.

ARTICLE 8. Miscellaneous.

(a) Assignment. The Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither the Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties.

(b) Governing Law. The Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder shall be governed by the laws of the State of Delaware, but always subject to the application of 46 U.S.C., Subtitle IV, Part A, and any other applicable U.S. regulatory law.

(c) Disputes. Any dispute arising out of this Agreement shall be settled by arbitration in accordance with the commercial rules of the American Arbitration Association as then in effect.

Ceres Gulf, Inc.

By: [Signature]

Name: ROBERT N. RUTENOW

Title: Service Pres. + CFO

Container Marine Terminals LLC

By: [Signature]

Name: JOHN MULLANEY

Title: DIRECTOR

Mediterranean Shipping Company, S.A.

By: [Signature]

Name: PASQUALE FORMISANO

Title: DIRECTOR

← ORIGINAL

Houston Terminal LLC

By: [Signature]

Name: MATTHEW S. WYPYSKI

Title: E.V.P.

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Ceres Gulf, Inc.

By: _____

Name: _____

Title: _____

Container Marine Terminals LLC

By: John Mullady

Name: JOHN MULLADY

Title: DIRECTOR

← ORIGINAL

Mediterranean Shipping Company, S.A.

By: _____

Name: _____

Title: _____

Houston Terminal LLC

By: M.S.W.

Name: MATTHEW S. WYPYSKI

Title: E.V.P.

← ORIGINAL

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Title: DIRECTOR

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Houston Terminal LLC

By: [Signature]

Name: MATTHEW S. WYPYSKI

Title: E.V.P.