

FEDERAL MARITIME COMMISSION

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AGREEMENT NO. 201198

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FEDERAL MARITIME COMMISSION



MARINE TERMINAL OPERATORS OF HAMPTON ROADS

DISCUSSION AGREEMENT

Expiration Date: None

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**ARTICLE I**

**FULL NAME OF THE AGREEMENT**

The Agreement established hereby shall be entitled the “Marine Terminal Operators of Hampton Roads Discussion Agreement” (hereinafter, the “Agreement”).

**ARTICLE II**

**PURPOSE OF THE AGREEMENT**

It is the purpose of this Agreement to authorize the signatory marine terminal operators hereto, as well as those who may subsequently join this Agreement, to meet and discuss all subjects allowable under 46 U.S.C. § 40301, et seq., and the regulations relevant thereto, in order to:

1. Make efficient use of their wharves, berths and cargo handling equipment and provide for the maximum employment of their respective workforces;
2. Provide for the full utilization of their facilities particularly when, due to construction, expansion, redesign, man-made or natural calamity, portions of the marine terminal facilities are out of service; and
3. Provide for the sharing and utilization of available rail service from the parties’ marine terminal facilities to the Virginia Inland Port and such other inland marine terminal facilities as may be developed in the future.

**ARTICLE III**

**PARTIES TO THE AGREEMENT**

The current parties to this Agreement are:

Virginia International Terminals, Inc.  
P.O. Box 1387  
Norfolk, Virginia 23501

APM Terminals Virginia, Inc.  
1000 APM Terminals Blvd.  
Portsmouth, Virginia 23703-2361

Notice of parties subscribing to or withdrawing from the Agreement will be given the Federal Maritime Commission.

**ARTICLE IV**

**GEOGRAPHIC SCOPE OF THE AGREEMENT**

The geographical scope of this Agreement shall be the marine terminals in Hampton Roads, Virginia served by common carriers by water in the foreign commerce of the United States and inland marine terminals in the State of Virginia.

**ARTICLE V**

**OVERVIEW OF AGREEMENT AUTHORITY**

- A. The parties are authorized to:
1. Discuss and agree upon marine terminal rates, charges, rules, regulations practices, terms and conditions relating to the receipt, handling or delivery of cargo or passengers. No party shall be required to adhere to any agreement;
  2. Discuss and agree upon the use and operation of marine terminal facilities, including but not limited to the sharing of any such facilities;
  3. Engage in such other cooperative working arrangements as they deem appropriate and necessary to improve the efficient use and operation of their respective marine terminal facilities.
- B. The parties agree that APMT shall be entitled to load cargo of its ocean common carrier customers on the rail service provided to VIT from marine terminal facilities in Hampton Roads to the Virginia Inland Port for such volumes of cargo as customer demand warrants and space on the service permits. The parties are authorized to discuss and agree on the terms and

conditions applicable to APMT's use of said rail service, including the charges for such use and payments for drayage, terminal loading and unloading costs, and other costs incurred by either party.

C. The parties are authorized to exchange information pertaining to all aspects of their marine terminal operations and activities, including but not limited to volumes, costs, rates, terms and conditions of their respective services.

## **ARTICLE VI**

### **OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY**

The marine terminal operators who are signatory to this Agreement shall elect for each meeting one of their number as Chairman, and that individual shall preside over that meeting relinquishing his/her office at the end of the meeting.

The initial Secretary of the Agreement shall be Ruth S. Briggs, whose address is 600 World Trade Center, Norfolk, Virginia 23510. The Secretary shall be responsible for all administrative tasks as directed by a majority vote of the members. The Secretary shall schedule meetings upon receiving a request for a meeting, giving all members a minimum of seven (7) days notice and distributing of a proposed meeting agenda. The Secretary will further be responsible for filing all agreements, agreement modifications, minutes and other required information with the Federal Maritime Commission and other government entities on behalf of the Agreement.

The signatories to the Agreement shall have the power to retain the services of an administrator to collect membership fees (if any), pay expenses and perform such other duties as may be directed by them.

**ARTICLE VII**

**MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION**

Only marine terminal operators whose business involves ocean transportation in the foreign commerce of the United States within the geographical scope of this Agreement are eligible to become parties to this Agreement. New members shall be allowed to subscribe if the current members vote in favor of their application for membership. Memberships may also be revoked by the current members. Any member may withdraw from the Agreement at any time by giving thirty (30) days written notice to the Chairman or the Secretary.

**ARTICLE VIII**

**VOTING**

Each member shall designate a representative and may designate an alternate who shall be authorized to vote on its behalf on any matter coming before a meeting of the members of this Agreement. All actions taken shall be by majority vote of the members in attendance and voting. A quorum shall be a majority of the members of the Discussion Agreement. A majority of the members may agree by telephone, in writing or in person, to reach agreement on any matter by telephone poll.

**ARTICLE IX**

**DURATION AND TERMINATION OF THE AGREEMENT**

This Agreement shall not become effective until permitted by the Shipping Act of 1984, 46 U.S.C. § 40304. This Agreement shall remain effective until cancelled by a majority vote of the subscribing members.

**ARTICLE X**

**GOVERNING LAW AND ARBITRATION**

A. This Agreement shall be subject to the U.S. Shipping Act of 1984, as amended, and shall otherwise be construed and governed by the laws of the Commonwealth of Virginia.

B. The parties agree that any and all disputes arising out of or in connection with the agreement shall be resolved by arbitration. Arbitration shall take place in Norfolk, Virginia, or such other place as the parties to the dispute may mutually agree. The arbitration shall be before a single arbitrator to be appointed by agreement of the parties to the dispute. If the parties fail to agree on a single arbitrator within twenty (20) days of the date of forwarding of a written demand for arbitration, then either party may immediately file an application with the Maritime Arbitration Association of the United States ("MAA") and request that a single arbitrator be appointed within 20 days of that application. Failure of MAA to timely appoint a single arbitrator shall not defeat the arbitration process. There shall be no restrictions on the nationality of the arbitrator nor must the arbitrator be a member of the MAA. The arbitration shall be conducted in accordance with MAA rules, and the parties expressly agree that the costs and expenses of the arbitration (including reasonable attorneys' fees and costs) shall be born by the non-prevailing party or as the arbitrator shall otherwise determine. The decision of the arbitrator shall be final, binding, and not subject to further review than otherwise allowed under the federal arbitration act.

**ARTICLE XI**

**MISCELLANEOUS**

A. This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute

one and the same agreement.

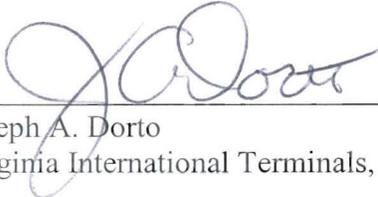
B. In the event any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of the Agreement shall continue in force and effect unless the parties would not have entered into the Agreement without that provision which may be proven to be illegal or unenforceable.

**ARTICLE XII**

**NOTICES**

All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and sent by letter, telex or other written means as may be agreed, and addressed to the other party at the address set forth in Article 3 hereof. Any such legal process, notice or other formal communications shall be deemed to have reached the person to whom they are addressed 72 hours after posting or when dispatched.

**THUS DONE AND EXECUTED** at Norfolk, VA, this the 22<sup>ND</sup> day of October, 2008.

  
\_\_\_\_\_  
Joseph A. Dorto  
Virginia International Terminals, Inc.

\_\_\_\_\_  
Name:  
APM Terminals Virginia, Inc.

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Marine Terminal Operators of Hampton Roads Discussion Agreement  
F.M.C. No. 201198

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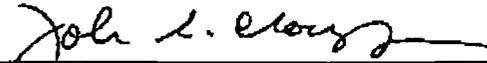
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THUS DONE AND EXECUTED at CHARLOTTE N.C., this the 22 day of October, 2008.

\_\_\_\_\_  
Joseph A. Dorto  
Virginia International Terminals, Inc.

  
\_\_\_\_\_  
Name: John E. Crowley  
APM Terminals Virginia, Inc.  
on behalf of APM Terminals Virginia, Inc.